

to a healthy environment; and (iv) institutional arrangements with regard to the establishment of an international criminal jurisdiction.

Finally, he urged the AALCC to strive for the resolution of international economic problems, particularly of developing countries through measures such as a reduction in interest rates, increase in development assistance, curbs on protectionist policies and trade barriers, technology transfer to developing countries and stabilisation of commodity prices.

9. The *Delegate of China* underlined the importance of international law in the current transition period in international relations, especially for those peoples all over the world who had suffered oppression and slavery under imperialism and colonialism. He emphasized that the new international order should be established on the basis of the principles of international law and the generally recognised norms governing international relations. For realizing this goal, the Delegate said, the activities being undertaken during the Decade of International Law would be of immense help.

Referring to the measures taken by the Chinese Government in that regard, he stated that those included the organisation of two symposia, one related to 'Environmental Law' and the other to 'Third World Countries and International Law'. The first symposium was held in Beijing during August 1991 in cooperation with UNCED. He felt that the increasing involvement in the activities of the Programme would help the countries of Asia and Africa to expound their points of view.

10. The *Delegate of Japan*, appreciating the excellent preparatory work done by the AALCC Secretariat on this topic, referred to the Organisation of the Workshop on International Refugee and Humanitarian Law in the Asian-African Region jointly organised by the AALCC and UNHCR in New Delhi in October 1991 and felt that this was particularly useful and consonant with the goals aimed at during the UN Decade of International Law. He expressed the hope that the AALCC as a forum for Asian and African legal experts would assist in realising the objectives of the Decade. He also briefly dealt with the role of international law in establishing a peaceful international community. He laid stress on the importance of international law for the peaceful settlement of disputes between States. He pointed out that the Government of Japan had made a contribution of US \$ 55,000 in July 1991 towards the Trust Fund for assisting the States in the settlement of disputes through the International Court of Justice. Finally, he stated that his country intended to do its utmost for the success of the UN Decade of International Law.

11. The *Delegate of Iran* commended the Secretariat for its study on the topic and observed that the objectives to be realised during the Decade should be :

- (a) acceptance of and respect for the principles of international law;
- (b) use of peaceful ways and means for the settlement of international disputes;

- (c) gradual preparation and development of international law; and
- (d) promoting respect for international law.

He noted that developing countries had been unable to make significant contribution towards the attainment of these objectives. He, however, appreciated the role of the AALCC in helping member States to take an active part in the international legal process. He referred to the efforts under way in the United Nations in this regard and proposed that the AALCC Secretariat should submit a report on the initiatives taken by it on this item to the next session of the UN General Assembly. He further proposed that the AALCC Secretariat should prepare a study formulating programmes for the remaining part of the Decade which should be circulated amongst the member States of the AALCC.

12. The *Observer for Sweden* observed that though two years of the Decade had now passed, the work was still at a preliminary stage. He noted that the contributions to the programme for the Decade from member States of the United Nations were fairly limited. He outlined the proposed measures for involving member States actively. He referred to the basic idea of making the International Court of Justice widely acceptable and urged the Member States to take the required measures to realise this goal. He then mentioned the measures and activities undertaken by Sweden and other Nordic countries.

He drew attention of the AALCC to the complexities involved in a codification exercise, but felt that the idea of a new Peace Conference towards the end of the Decade seemed to be widely supported. He dealt briefly with the infrastructural problems in implementing the programme and activities of the Decade. In this context, the Observer referred to the growing cooperation among the legal advisers of the Ministry of Foreign Affairs of the Member States of the United Nations and the initiatives taken by the legal advisers in that regard.

Finally, dealing with the future programmes, the Observer outlined the difficult tasks which could be refugees, environment, economic development, overpopulation and many other problems. In that context he observed that "we should do everything possible within the framework of our responsibilities as lawyers". He also referred to the newly constituted legal advisers' forum for informal consultations about the Decade and the offer of Sweden to assist in financing similar gatherings in the various parts of Asia and Africa.

13. At the end of the deliberations, the AALCC unanimously adopted the following resolution :

"UNITED NATIONS DECADE OF INTERNATIONAL LAW

The Asian-African Legal Consultative Committee, having taken note at its thirty-first session of the Report of the Secretary-General on the United Nations Decade of International Law (Doc. No. AALCC/XXXI/ Islamabad/92/6) and having heard the Chairman of the Working Group on

the United Nations Decade of International Law and member and observer delegations during the session

Reaffirms the importance of strict adherence to the principles of International Law as in the Charter of the United Nations;

Affirms that many of the political, economic and social problems between Member States can be settled on the basis of the law;

Decides that the item be given serious attention and steps be taken to place the same on the agenda of the meeting of the Legal Advisers of the Member States of the AALCC to be convened at the United Nations Office in New York during the forty-seventh session of the General Assembly;

Welcomes the various initiatives taken by the Member States of the AALCC in the implementation and observance of the Decade;

Requests the Secretary-General to apprise the Secretary-General of the United Nations of the initiatives taken by the AALCC in this regard;

Urges the Member States to continue to give serious attention to the observance and implementation of the Decade;

Directs the Secretariat to continue its efforts towards the success of the United Nations Decade of International Law; and

Decides to place the item 'the United Nations Decade of International Law' on the agenda of its thirty-second session."

1. The Asian-African Legal Consultative Committee (hereinafter referred to as the Committee) at its Thirtieth session held in Cairo in April 1991 took note on the Report of the Secretary-General of the Committee. Professor Budislav Vukas, the Chairman of the *Ad Hoc* Working Group on the United Nations Decade of International Law established during the Forty-fifth Session of the Assembly, gave a comprehensive report on the work of the Working Group. The Committee expressed its gratitude to Professor Budislav Vukas, the Chairman of the Working group, and requested the Secretary-General of the Committee to report to the Secretary-General of the United Nations on the initiatives taken by the Committee in that regard.

2. The Committee also directed the Secretariat of the Committee to continue its efforts towards its contribution to the success of the United Nations Decade of International Law and that the item be given serious attention and be placed on the agenda of the meeting of the Legal Advisers of the Committee to be convened at the United Nations offices during the forthcoming Session of the General Assembly.

3. In partial fulfilment of that mandate the Secretariat of the Asian-African Legal Consultative Committee has prepared the present report which *inter alia* incorporates some of the views expressed by delegates of member States in the Thirtieth Session of the Committee on the objectives of the United Nations Decade of International Law as defined in General Assembly Resolution 44/23.

4. The adoption by the 44th Session of the General Assembly of the United Nations of the 1990s as the UN Decade of International Law was considered as a welcome idea and must be embraced by all. The development and proliferation of highly sophisticated weapons of mass destruction and the grave consequences this poses for mankind, the increasing tensions in international relations and all such negative developments, as well as the need for mankind to enjoy in peace the fruits of its vast labour and the benefits of the immense technological advances made during this century, make it imperative that nations, both big and small, weak and strong, learn to live in peace with each other. The view was expressed that States should learn to settle their differences in peace and harmony and international relations should be governed by accepted principles of international law, and not by Machievellian doctrines, which hitherto have dominated powers of the world for the past 400 years or more.

5. One delegate proposed the following subjects for further study within the framework of the Decade of International Law, viz.

- (1) Developing Countries and International Law;
- (2) Declaration on Principles of International Law concerning Peace and Development; and
- (3) Developing Countries and International Environmental Law.

6. It was *inter alia* stated that while it is desirable to accomplish the programme proposed by the AALCC Secretariat as a workable and tangible way of attaining the ideals of the Decade, much more needed to be done. Several detailed studies should be undertaken at various fora along the line outlined by the Chairman of the Working Group on the Decade. At the end of it, all States should strive to genuinely and strictly implement the various UN Resolutions and Multilateral and Bilateral Treaties to which they are parties. Without this, the Decade may well come to a close having achieved little in practical terms. What is required during the Decade is peace and amity. This can only be achieved through adherence to norms of international law and practice.

A. Acceptance of and Respect for the Principles of International Law

7. The view was expressed that the significance of the Decade of International Law is tied up with the Rule of Law hardly needed to be emphasized. However, the concept was nebulous and it was not patently clear as to what exactly the concept entailed in practice. The adoption and implementation of a meaningful programme over the period could involve the acceptance of and respect for the principles of international law in practical terms.

8. One delegate urged that member States of the AALCC should, during the Decade, strive with great zeal and determination to ratify most of multilateral conventions. This, it was stated, would go a long way towards the attainment of one of the objectives, of both the AALCC as well as the Decade, of developing international law. The recommendation of the Secretariat of the Committee that member States who had not already done so ratify such conventions as the United Nations Convention on the Law of the Sea, 1982; the Basel Convention on the Transboundary Movement of Hazardous Substances and Their Disposal, 1989; and the Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa, 1991 etc. was appreciated and well received.

B. Peaceful Settlement of Disputes

9. Recourse to the International Court of Justice as the principal mechanism for dispute settlement should form an integral part of an international initiative on peaceful settlement of disputes.

10. The view was expressed that the current international political environment demanded that the focus of the initiative of the Decade of International Law should be on the promotion of peaceful settlement of disputes between States. The need expressed in the General Assembly for the formulation of an international convention on peaceful settlement of disputes had assumed increased importance in the current political environment. It is believed that the formulation of specific legal obligations on peaceful settlement of disputes and interim measures for their containment would contribute to preventing the escalation into major inter-

national conflicts of disputes as well as disputes of a local character amenable to peaceful settlement through negotiation and compromise. The nucleus of a proposed convention on the subject is already contained in the Manila Declaration on the Peaceful Settlement of International Disputes. Consideration needs to be given whether the early formulation and adoption of a Convention on the Peaceful Settlement of Disputes would enhance international peace and security and ensure security and stability of smaller States who are most vulnerable when international peace and security is threatened.

11. One delegation saw merit in the proposal of the Working Group of the United Nations, on the use of the chamber procedure of the ICJ, resort to the Court for advisory opinions as well as the proposal to empower the Secretary-General of the United Nations to request the advisory opinion of the International Court of Justice in respect of legal issues on which the good offices of the Secretary-General (of the United Nations) are sought.

12. The view was expressed that the International Court of Justice has a pivotal role to play in the changing nature of international relations and that the members of the international society must take advantage of the growing confidence reposed in the Court by the international community to strengthen its position, widen the scope of its jurisdiction and give binding effect to its decisions.

13. The suggestion that the Special Committee on the Charter of the United Nations or an *Ad Hoc* Committee be entrusted with the task of drawing up an international convention on the peaceful settlement of disputes was endorsed. The proposed international instrument should embody the full range of legal obligations from conflict prevention, negotiation, reporting to the UN organs and third party adjudication and binding decisions.

14. Consideration also needs to be given to the establishment of more regional institutions in Africa and Asia for the settlement of disputes. The OAU was commended for its strenuous efforts to have disputes between its member States settled regionally.

15. One delegate expressed the view that the suggestions and efforts would be an exercise in futility if they failed to achieve the following objectives :

- (a) a widespread and universal acceptance of the principle of sovereign equality before the law in international relations. This vital principle is being persistently flouted by the stronger nations of the world to the detriment of world peace and stability, and should be vigorously upheld;
- (b) with the bitter experiences of the colonial past fresh in the minds of most of the members of the Committee, they must endeavour to set an example for others to follow; States must learn to treat each other with respect and consideration and to settle their differences in peace;

- (c) they should put aside ideas of racial superiority and such practices as racial discrimination and intolerance, which create animosity and tensions between peoples and different racial groups and nations;
- (d) an endeavour should be made to revise some of the false, unethical and outmoded ideas which have governed the actions of nations in their relations with each other for many centuries, and brought so much suffering, destruction, enmity and confusion into the world. Some of the ideas include :

- (i) that politics of every kind have nothing to do with morality;
- (ii) that the supreme art of government in the international sphere is for a nation to have no permanent friends, but permanent interests; and
- (iii) that the rich and strong can only thrive and survive at the expense of the weak and poor.

16. It was stated that these false and outmoded ideas have made the world so dangerous to live in. There is no doubt that most of States want a new world order based on the rule of law, which would propel the world towards this new international order of peace, fairness, friendliness and stability. This is a new concept of government not based on the priority of self-interest, but mainly on the concern for the common good and the peace and survival of mankind as a whole.

17. The AALCC member States believed that the principle of peaceful settlement of international disputes, including judicial settlement of legal disputes, is a matter of great significance in the international community today, and that the efforts of the ICJ to facilitate solution to such disputes are becoming all the more important.

18. With respect to the promotion of the means and methods for the peaceful settlement of disputes between States, which is one of the important pillars of the Decade of International Law, appreciation was expressed for the initiative undertaken by the Secretary-General of the United Nations in establishing the Trust Fund to assist States in the settlement of disputes through the International Court of Justice. One delegate informed the Committee that his Government had appropriated the amount of 55,000 US Dollars as its contribution to the fund in its national budget for fiscal year 1991. The Trust Fund, it was felt, will become a useful instrument to provide the needy States with means of overcoming financial difficulties in resorting to judicial settlement of legal disputes by the ICJ.

19. Finally, on the question of strengthening the role of the International Court of Justice it was proposed that :

- (i) the role of ICJ should be strengthened within the framework of ICJ's Statutes and Rules and their potentialities should be fully worked out;

- (ii) serious study should be given to accept in various forms the jurisdiction of ICJ, including compulsory jurisdiction under Para 2 of the Article 36 of the Statute. At the same time, it should be kept in mind that the consent of the State constitutes the basis for ICJ's jurisdiction;
- (iii) States should be encouraged to accept ICJ's jurisdiction through 'Special Agreement' or dispute settlement clauses in Conventions;
- (iv) wider resort to ICJ for advisory jurisdiction should be encouraged;
- (v) appropriate use of the *ad hoc* chamber by the Court should be encouraged as an institutional form for trial cases; and
- (vi) States may, individually or collectively, take feasible steps to submit international disputes more frequently to international judicial settlement.

C. Progressive Development and Codification of International Law

20. At the Cairo Session of the Committee the view was expressed that the Decade of International Law has provided the Third World countries an opportunity to strive once again for the realization of their aspirations and demands. It was stated in this regard that the AALCC can play a significant role. It was pointed out that the Committee's contribution to the codification and progressive development of international law has been considerable and that its recommendations on various aspects of law-making have been duly reflected in the United Nations. Note was taken in this regard of references to AALCC in the Programme for the activities to be commenced during the first term (1990-92) of the United Nations Decade of International Law as contained in the Report of the Working Group on the UN Decade of International Law.

21. The view was also expressed that the proposals put forth by the Secretariat of the Committee in regard to the work programme for the Decade are not only sound and logical but also pragmatic and that it was gratifying to learn that the proposals advanced by the AALCC had been accepted as an important contribution.

22. With respect to codification and progressive development of international law, the view was also expressed that the Third World States did not press for radical changes in the law but they merely sought its re-examination and codification with their participation. The developing countries had, hitherto, influenced the codification and progressive development of international law only in a few instances. Their efforts to change certain aspects of international law or to promote their interests had not yet met with success even though in some respects the role of the Third World had been determinative. Reference was made in this respect to the principle of self-determination which following rapid decolonization had come to be incorporated in several international instruments.

23. It was stated that one of the manifold roles of the Committee was to make known the views of the developing countries in order to strike a balance in the process of progressive development and codification of international law. It was further stated that formulation of the principles and norms cannot be segregated. The process of formulation of principles and norms must go hand in hand with the process of implementation of those rules—if the rule of law were to prevail.

D. To Encourage the Teaching, Study, Dissemination and Wider Appreciation of International Law

24. To promote appreciation of international law by the general public at a higher level, it may be useful to arrange the international rules systematically by making a list of principal treaties in each of the major fields. One idea would be to designate each year of the decade to focus on a particular field. For example, one year could be devoted to promoting the Charter of the United Nations, another to promoting law on human rights and another on the Law of the Sea, etc. By according priority to a specific area each year, the work of systematizing the arrangement of international law and programme for their dissemination can be advanced.

25. One delegation lent support to the AALCC Secretariat proposal that the member States should endeavour to institute international law fellowships as part of the programme for technical co-operation among developing nations. It was pointed out in this regard that most of the existing fellowships provided by member States as well as the UN and such bodies as UNITAR, International Law Commission, the Hague Academy of International Law, etc. are not widely known in many countries. Accordingly, it was proposed that the Secretariat should find some means of bringing such information to the notice of member States. The AALCC Secretariat suggestion for the provision of in-house training for junior and middle ranking officials in Legal and Treaties Division of the various Ministries of Foreign Affairs and of Justice of member States of the Committee was received well. The constant divergence of views held by the developed and developing countries on various aspects of International Law due to their conflicting interests necessitated that opportunities be provided for bringing these two groups together as often as possible to narrow their differences, and agree on acceptable formulation of International Law. The organisation of seminars and workshops either by the Committee or in conjunction with various international organisations like UNHCR, UNEP, UNCITRAL, OAU, Pacem in Maribus and IMO etc. would be vigorously pursued. Such moves will not only encourage the progressive development of International Law and its codification, but would also promote acceptance of and respect for the principles of International Law.

26. The view was expressed that numerous principles of international law in a range of fields are playing a very important role in present-day international society. In promoting wider public appreciation of international law, it might be helpful to select those laws which are most fundamental

whose existence, purpose and outline should be understood by the general public and to focus on enhancing that understanding. Reference was made to the Charter of the United Nations which contains the most fundamental international principles governing international society. The significance of the Charter is further increasing as a new world order evolves and it deserves to be widely appreciated by all those who will be the constituents of the international society in the twenty-first century.

27. There was, therefore, the need to strengthen public awareness and understanding of the Charter of the United Nations. Toward this end, it was suggested that the United Nations should consider upgrading its public information services and preparing, if possible, new materials. It was also proposed that the UN should consider producing a manual on fundamental points of international law, including a brief commentary on such basic conventions as the Charter of the United Nations as well as on basic issues of general international law. In doing so, the United Nations should take into account the age of the manual's targeted readership as well as regional differences, to ensure that it will be given to conducting surveys at the beginning of the Decade as well as at its conclusion, to ascertain the level of public understanding of international law.

Initiatives taken by the Secretariat since the Cairo Session

28. In the attainment of the objectives of the United Nations Decade of International Law and to make its modest contribution to those objectives an item entitled the "United Nations Decade of International Law" was included in the agenda of the meeting of the Legal Advisers of member States of the Asian-African Legal Consultative Committee held at the United Nations Office in New York in November 1991. The Legal Advisers of twenty-six (26) member States and twelve (12) non-member States participated in that meeting. The President of the International Court of Justice, Sir Robert Jennings, and the Registrar of Court, H.E. Mr. Eduardo Valencia Ospina represented the World Court, H.E. Mr. Carl August Fleischhauer, the Legal Counsel to the United Nations, Ambassador Abdul Koroma, the Chairman of the International Law Commission, Ambassador P.C. Afonso, the Chairman of the Sixth Committee and Mr. Lee Roy, Principal Legal Officer at the United Nations Secretariat also attended.

29. The afore-mentioned meeting of the Legal Advisers also addressed itself to the Peaceful Settlement of Disputes. A detailed report of that meeting prepared for the Thirty-First Session may be found in brief No. AALCC/XXXI/Islamabad/92/18.

30. It will be recalled that at the Thirtieth Session held in Cairo, the Committee, *inter alia*, requested the Secretary-General to continue to monitor the progress of work of the United Nations and its Specialised Agencies as well as the PREPCOM of the United Nations Conference on Environment and Development (UNCED) and to cooperate with them. Pursuant to the mandate given at the Thirtieth Session, the Secretariat of the Committee

has actively followed the progress of work at the Third Session of the PREPCOM of the UNCED held at Geneva from 12th August to 4th September 1991. The AALCC Secretariat was represented by the Assistant Secretary-General, Mr. Huang Huikang, and the Permanent Observer of the AALCC to the United Nations, Mr. Bhagwat Singh.

31. The Secretariat has also been monitoring the progress of work of Inter-governmental Negotiating Committee for a Convention on Bio-Diversity. Mr. D.S. Mohil, Principal Legal Officer at the Secretariat of the Committee attended the Fourth Session of Inter-governmental Negotiating Committee held in Nairobi from 23 September to October 2, 1991.

32. The Secretariat of the AALCC was also represented at two sessions of Inter-governmental Negotiating Committee for a Framework Convention on Climate Change. At the Second Session of the Inter-governmental Negotiating Committee for a Framework Convention on Climate Change (hereinafter called the INC) held at Geneva in June 1991, the Secretariat was represented by the Secretary-General, the Director, Mr. P.K. Jha and Ms. Allison Powell.

33. The Secretary-General and Mr. P.K. Jha also attended the Third Session of the INC held in Nairobi, Kenya, in September 1991. During the Third Session of the INC, the Secretary-General convened a meeting on matters related to the preparation of a Framework Convention on Climate Change. The meeting held on 11th September 1991 was attended by the representatives of twenty (20) member States and eleven (11) non-member States. The discussions at that meeting revolved around a note on the proposed Framework Convention on Climate Change prepared by the Secretariat. Subsequently the Secretary-General attended the fourth session of the INC held at Geneva in December 1991.

34. It may be stated that the Secretary-General participated in the Meeting of Senior Environmental Law Experts on the progress made on 1981 Montevideo Programme and Preparation for the second meeting on Development and Periodic Review of the Environmental Law convened by the UNEP in Geneva in July 1991. The two-fold objective of the meeting was to glean the views of the Senior Environmental Law Experts on the preparation for the *ad hoc* meeting of senior environmental law experts which was subsequently held at Rio de Janeiro from 30th October to 2 November 1991. The other purpose of the meeting was to review the progress made in the implementation of the 1981 Montevideo Programme and to formulate the programme for the development of environmental law over the next decade.

35. The Secretariat of the Asian-African Legal Consultative Committee organised in conjunction with the office of the UNHCR a three-day workshop on 'International Refugee and Humanitarian Law in the Asian-African Region'. The Workshop was held in New Delhi in October 1991 and a detailed report of that Workshop has since been published by the AALCC Secretariat.

II. STATUS AND TREATMENT OF REFUGEES

(i) INTRODUCTION

1. The above topic was initially referred to the AALCC by the Government of Egypt in 1963. In its Memorandum referring the topic, the Government of Egypt while indicating the legal issues for consideration stated that apart from humanitarian considerations, the status and rights of refugees raised several issues of mutual interest to the member States of the AALCC and that, therefore, the AALCC's views would be invaluable in understanding the refugee problem.

2. At the sixth session of the AALCC held in Cairo (1964), the topic was taken up for consideration on the basis of a preliminary note presented by the Secretariat and a Memorandum furnished by the Office of the UNHCR. Subsequently, at its eighth session held in Bangkok (1966), the AALCC adopted certain principles concerning the status and treatment of refugees, commonly known as 'The Bangkok Principles (1966)'. These principles have since been widely applied in the practice of States and were taken into consideration in formulating the basis for the United Nations Declaration on Territorial Asylum adopted in 1967.

3. Subsequently, at its eleventh session held in Accra (1970), the AALCC considered and adopted an 'Addendum to the Bangkok Principles'. This addendum contains an elaboration of the right to return of any person who because of foreign domination, external aggression or occupation has left his habitual place of residence. In its continued efforts to improve upon the Bangkok Principles, the AALCC at its twenty-sixth session held in Bangkok (1987) adopted the 'Burden Sharing Principles' as an additional set of principles to supplement the Bangkok Principles.

Rights and Duties of a Refugee in the First Country of Asylum – The Principle of Non-Refoulement

4. During the twenty-ninth session held in Beijing (1990) the AALCC directed the Secretariat to carry out a study of the rights and duties of refugees in the first country of asylum. Accordingly, the Secretariat prepared a study and presented it to the thirtieth session of the AALCC held in Cairo (1991). The study analysed in-depth the rights enjoyed by a refugee under the 1951 Convention relating to the Status of Refugees. Some specific rights such as the right of repatriation and the right to indemnification under the Bangkok Principles were also examined. In addition, the study also highlighted the obligations of the first country of asylum towards the refugees. On the question of duties of a refugee, the study underscored the fact that it was the duty of a refugee to refrain from participating in any political or subversive activities. It also highlighted that the country of asylum

should not encourage or sponsor any subversive activities against the country of origin or any other country to achieve limited political gains since this would be contrary to the purposes and principles of the Charter of the United Nations as well as the spirit of good neighbourly relations amongst States. However, the study did suggest an exception to this norm for the sake of national liberation movements and the right to self-determination of the oppressed peoples. The AALCC commended the Secretariat study and directed the Secretariat to prepare a further study on the rights and duties of a refugee in the first country of asylum with particular emphasis on the principle of *non-refoulement*.

5. The Secretariat, accordingly, prepared a study (reproduced in this publication evaluating the principle of *non-refoulement* under the 1951 Refugee Convention as well as the Bangkok Principles of 1966 and the OAU Convention governing the Specific Aspects of the Refugee Problem in Africa of 1969 and presented it before the thirty-first session of the AALCC held in Islamabad (Pakistan) in January-February 1992.

Establishment of a Safety Zone in the Country of Origin for the Displaced Persons

6. During the twenty-fourth session of the AALCC held in Kathmandu (1985), the Delegate of Thailand at the conclusion of the discussion on the question of 'Burden Sharing' proposed that the AALCC should initiate a study on a closely related aspect, namely the possible establishment of safety zones for refugees or displaced persons in their country of origin. The Thai Delegate reiterated his request at the twenty-fifth session held in Arusha (1986) and suggested that the establishment of safety zones for refugees or displaced persons in their country of origin would lessen the burden for the international community and to some extent might alleviate the refugee problem particularly if their safety in their country of origin was guaranteed and their well-being assured by the international community. He proposed that the study might focus attention in particular on the following issues :

- (i) The circumstances under which safety zones could be established in the home country of refugees or displaced persons;
- (ii) Whether neutral bodies like international organisations should be entrusted with the responsibility for management, food, medical care and security in the safety zones; and
- (iii) The status of the safety zones.

7. At the twenty-sixth session of the AALCC held in Bangkok (1987), the Secretariat presented a preliminary note on this topic based on the guidelines provided by the Thai Delegate. At the twenty-seventh session of the AALCC held in Singapore (1988), a revised note was presented by the Secretariat reflecting therein the comments and observations made by other delegates at the Bangkok Session. At the Singapore Session, the Thai Delegate further elaborated on the proposal regarding the concept of safety zones.

He expressed the view that a safety zone for displaced persons in their country of origin was legally feasible as there was no reason for not according them the same international protection as that granted to the refugees as defined in the existing Convention.

8. However, the Observer for the UNHCR felt that the concept raised complex issues in the areas of human rights and refugee law as well as from the view-point of humanitarian law. He pointed out that although the proposal was conceptually similar to the neutralized zone envisaged by Article 15 of the Fourth Geneva Convention of 1949 as extended by Article 60 of its Protocol I, there were differences when it came to an individual refugee. According to him, any notion that an asylum seeker or groups thereof, fleeing persecution in the country of origin should be required to delay the asylum request and to remain in the country where they had genuine fear of persecution ran contrary to the basic provisions of human rights and refugee law which, apart from the Universal Declaration on Human Rights, were reflected in the AALCC's Bangkok Principles. He was of the view that the proposal had so far been presented as an asylum option which was contrary to the institution of asylum. Protection granted to a foreign national against the exercise of jurisdiction by his national State was the key provision in refugee law. According to him, another point of practical significance was that while the proposal assumed that safety zones were for refugees, this was not consistent with the refugee law. A refugee was traditionally understood to be outside the country of his nationality and unable or unwilling to avail himself of the protection of that country. Consequently, persons for whom safety zones were intended would not be 'refugees' in the usual sense as they would be within their country of origin. He, therefore, expressed the view that the legal regime of rights, duties and protection to be applied to persons in the safety zones would need to be different from that prescribed in the basic refugee instruments.

9. Several delegates spoke in favour of the concept but expressed doubts about its viability. At the end of the deliberations, the Secretariat was directed to prepare a further study on this topic.

10. Accordingly, a further study providing a concrete framework containing 13 principles to concretize the concept of safety zones was presented by the Secretariat to the twenty-eighth session of the AALCC held in Nairobi (1989). However, several delegates at that session expressed the view that since the question of safety zones involved many political issues, the item should be deferred to a future date, a decision was taken to that effect. However, during the thirtieth session held in Cairo (1991), the AALCC taking note of the current importance of the item decide to include the item once again on its work programme, and directed the Secretariat to prepare a study for submission at the next session.

11. Accordingly, at the thirty-first session of the AALCC held in Islamabad (Pakistan) in January-February 1992, the Secretariat presented a further study on this topic.