

Thereafter at a meeting held in Divonne (France) between the representatives of the AALCC, OAU, and the UNHCR the view expressed was that it was necessary to update the OAU/UNHCR guidelines on the national refugee legislation prepared in 1980.

B. ESTABLISHMENT OF "SAFETY ZONES" FOR THE DISPLACED PERSONS IN THE COUNTRY OF ORIGIN

During the Twenty-fourth session of the AALCC held in Kathmandu (1985), the Delegate of Thailand on behalf of his Government proposed that the AALCC should intimate a study on a closely related aspects 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.

The matter has regularly been discussed at successive sessions of the Committee. At the Twenty-eighth Session held in Nairobi in 1989 the Secretariat presented a set of principles which provided a framework for the establishment of Safety Zones. At that session, several delegates expressed the view that since the question of safety zones raised many political, issues the consideration of the item should be deferred to a future date.

During the Thirtieth Session held in Cairo in 1991 the delegate of Thailand suggested that bearing in mind the recent events particularly, the Gulf War the proposal made by his Government on the question of establishment of Safety Zones for the displaced persons in the country of origin should be placed once again on the agenda of the Committee for further consideration. In fulfillment of the mandate of the Thirtieth session the Secretariat presented a further brief, on the topic to the Thirty-first

session of the Committee held in Islamabad. The said brief analysed the status of the persons seeking asylum in the proposed Safety Zones, the issue of domestic jurisdiction and the non-interference in the internal affairs of the State and the current practice of establishing Safety or similar zones. The Representative of the United Nations High Commissioner for Refugees during that session observed that the question of the establishment of Safety Zones for displaced persons in their country of origin was an issue in which a clear distinction between humanitarian and political aspects, and between State sovereignty and its obligations were not easy to delineate. He stated that it would be useful to distinguish three objectives viz. (i) preventive i.e. such zones could help remove the need to flee; (ii) orderly departure i.e. such zones could increase safety during flight; and (iii) that they could facilitate voluntary return by helping remove the causes for the flight. With regard to the preventive aspect of the establishment of the Safety Zones he expressed the view that the Executive Committee of the UNHCR in this regard had in October 1991 recognised the responsibilities of States to eliminate the causes of refugee outflows and had called upon the High Commissioner to explore the preventive strategies in that regard.

During the deliberations at the Thirty-First Session of the Committee a member State representatives observed that the establishment of safety zones for refugees or displaced persons in their countries of origin would lessen the burden of the country which provided temporary shelter. Another delegate emphasized that in considering the establishment of Safety Zones and their Status, due regard to the principle of sovereignty and territorial integrity of the State of origin must be taken into account. At the conclusion of the debate at that session the Committee decided to place the item on the agenda of its thirty second Session.

Consequently for the Thirty-second Session held in Kampla in February 1993, the AALCC prepared a revised study on the topic of Safety Zones. Introducing the paper the Deputy Secretary-General Mr. Toru Iwanami observed that recent developments had made the question of establishment of Safety Zones topical and that the brief prepared by the Secretariat referred to the contemporary practice in various conflict areas as one possible solution for reducing refugee exodus. The Representative of the UNHCR in his statement pointed out that there was no international legal instrument which clearly defined and dealt with the problems of internally displaced persons. Except the four Geneva Conventions of 1949 and the 1977 Protocols applicable in times of war or armed conflicts which provided for a role of the ICRC there was no international agency or organization entrusted with the responsibility of furnishing humanitarian assistance to internally displaced

persons. However the UNHCR had on several occasions been requested by the United Nations, on an ad hoc basis to assist certain groups of persons who were in refugee-like situations or intermingled with refugees or returnees.

During the deliberations one delegate pointed out that whilst international law imposed stringent obligations on receiving States while the State of origin (of the refugees) apparently had no legal obligations. In his view it was necessary to elaborate the "cessation clauses", in a more pragmatic fashion since the solution to the refugee problem lay in addressing the root causes in the State of origin. The establishment of safety zones, in his opinion, could not only reduce the burden of neighbouring receiving States but it also presented an opportunity for settlement and repatriation of displaced persons. He emphasized, however, that the establishment and administration of such Safety Zones should respect the sovereignty and territorial integrity of the State concerned. The resolution which was adopted by the Committee at the Thirty-second Session of the Committee called for closer interaction among AALCC, UNHCR and OAU in undertaking joint studies and in exchanging information on the subject. The UNHCR/OAU working group has been reinforced by the inclusion of the AALCC. A tripartite meeting was held in June 1993 in Geneva and the Secretary-General of the AALCC participated in the discussions.

Thirty-third Session : Discussions

Introducing the item "Status and Treatment of Refugees" the Deputy Secretary-General Mr. Toru Iwanami stated that the Secretariat had prepared two briefs addressed to two specific aspects of the subject viz. Model Legislation on the Status and Treatment of Refugees and the Establishment of Safety Zones for the Displaced Persons in the Country of Origin. He pointed out that the item 'Model Legislation on the Status and Treatment of Refugees' was placed on the agenda of the AALCC following upon a decision of the Thirty-first Session of the Committee held at Islamabad in 1992. At that session the Committee had adopted the recommendations of the AALCC-UNHCR Workshop on International Refugee and Humanitarian Law in Asian-African Region held in New Delhi in October 1991 and approved of its recommendation to prepare a model legislation in cooperation with the office of the UNHCR with the objective of assisting Member States in enacting appropriate national legislation on refugees.

In pursuance of that mandate the Secretariat had prepared a preliminary study on the proposed model legislation on refugees which presented an overview of the features of contemporary refugees law and also incorporated

a draft structure of the proposed model legislation on refugees. He recalled that the brief prepared by the Secretariat for the Thirty-second Session undertook a comparative study of the definitions incorporated in the existing international instruments viz. the Refugee Convention of 1951 and the 1967 Protocol thereto; the OAU Convention of 1969; the Cartagena Declaration of 1984 as well as the Committee's Bangkok principles of 1961 and Addendum I of 1970 thereto. That Brief made a case for the need to expand the scope of the term "refugee" to conform to the contemporary developments and to refer to the violation of human rights as a criteria for the determination of the refugees status along the lines of the Cartagena declaration.

The Committee at its Thirty-second Session decided to "continue with the study of the model legislation in close cooperation with the UNHCR and OAU which includes study of various legislations on refugees in the Asian-African region". He pointed out that the committee at its Thirty-second Session did not debate the proposed structure of the Model Legislation.

Pursuant to that decision the Secretary-General held informal consultations with the representatives of the Organization of African Unity (OAU) as well as the UNHCR, at Addis Ababa during the second week of February 1993. At that meeting it was agreed (i) to reactivate the OAU/UNHCR Working Group on Refugees and to include therein the AALCC and (ii) to reactivate the Study of a Model Legislation. Thereafter another round table meeting of the representatives of the AALCC, OAU and the UNHCR was held in Geneva in June 1993. The focus of discussions at that meeting was the proposed model legislation in refugees. During that tripartite meeting it was observed that the model legislation would be much more meaningful if it were incorporated into national laws.

Accordingly, the Brief prepared by the Secretariat apart from reflecting the current situation of municipal legislation on refugees refers to the significance of ratifying the international instruments relating to status and treatment of refugees. It also includes a draft structure of the model legislation on refugees which the Secretariat was called upon to prepare.

In keeping with the view that the model legislation could be drafted in 'Blocks' the Secretariat study also furnished an overview of the legislative history of the term "Refugees". The Secretariat is of the view that there is a need to consider the distinction to be drawn between the terms to be employed and the scope to be given to the Model Legislation. He stated that the Committee may wish to consider whether or not the Secretariat should seek to incorporate especially, distinctly, enunciated definitions of some key terms to be employed in the proposed model legislation.

He stated further that the Committee might now wish to give consideration to the extent and scope of the key term around which the proposed model legislation is to be drafted. The future work of the Secretariat the preparation of Model Legislation of rights and duties of refugees would now rest on the directives which the Committee may give. The guidelines that the Committee may wish to furnish would enable the Secretariat to fulfill its mandate at an early date.

Turning to the issue of the Establishment of Safety Zones for Refugees and the displaced persons in their country of origin the Deputy Secretary General stated that the item was first placed on the agenda of the session of the Committee at the instance of the delegate of the Government of Thailand. At the twenty-eighth session of the Committee held in Nairobi in 1989 the Secretariat had presented a set of principles which provided for a framework for the establishment of Safety Zones. At that session, several delegates expressed the view that since the question of safety zones raised many political issues the consideration of the item should be deferred to a future date.

The item was reactivated in 1991 when during the Thirtieth Session held in Cairo the delegate of Thailand suggested that in view of the recent events particularly the Gulf War the proposal made by his Government on the question of establishment of Safety Zones for the displaced persons in the country of origin should be placed once again on the agenda of the Committee for further considerations. In fulfillment of the mandate of the Thirtieth Session the Secretariat presented a further Brief, on the topic to the Thirty-first session of the Committee held in Islamabad. The Brief analysed the status of the persons seeking asylum in the proposed Safety Zones, the issue of domestic jurisdiction and the non-interference in the internal affairs of the State and the current practice of establishing Safety or similar zones. At that session the Committee directed the Secretariat to update the study on the topic and to include in it the question of minimizing and removing the causes of influx of Refugees and displaced persons.

Thereafter at the Thirty-second Session held in Kampala in 1993 the Committee considered a revised study on the question of establishment of Safety Zones. At that Session it was decided that the Secretariat of the AALCC should forge closer interaction with the UNHCR and OAU in undertaking joint studies and in exchanging information on the subject. Since then the UNHCR/OAU Working Group has been reformed by the inclusion of the AALCC and tripartite meeting was held in June 1993 in Geneva and the Secretary-General of the AALCC participated in the discussions. The

Secretariat has now prepared a revised study on the question of establishment of Safety Zones for consideration by the committee at Thirty-third Session. The study prepared by the Secretariat has retained the set of 13 principles which could furnish a framework for the establishment of the Safety Zones for Displaced Persons in their country of origin.

The Deputy Secretary-General further stated that in the view of the Secretariat the topic needed further study with a careful evaluation of the situation and practice in such areas as in northern Iraq, Sri Lanka, Yugoslavia, Somalia among others. He called upon the Committee to give consideration to the directions which the future work of the Secretariat should take as the Committee was addressing itself to a novel concept and in the absence of a consistent and uniform terminology the fine distinction between the emerging principles of humanitarian law and the customary principles of human rights and refugee law place the concept in a grey area where the two aforementioned branches of law overlap. He said that the usage of a plethora of terms such diverse as "Safety Zones", "Open Relief Centres", "Security Zones", "Safety Haven Zones", "Safe Corridor" and "Safety Corridors" not to mention "humanitarian access" can scarcely be said to be conducive to the progressive development or codification of law where several customary and codified principles of International Law interact, coincide and at times even appear to be mutually exclusive. This he pointed out is particularly true of the principles of State Sovereignty and non-interference in the domestic affairs of the State. He stated that the Committee should give consideration to these and other matters in determining the future work of the Secretariat in this regard.

The Representative of the United Nations High Commissioner for Refugees stated that since the establishment of the office of the UNHCR the number of refugees had grown in numbers every year partially on account of internal and external conflicts which involved and affected almost twenty-five million of the world population. In the view of the office of the UNHCR every Member State of the international society needed to adopt a national legislation to enable it to manage and regulate humanitarian assistance to be rendered to refugees and displaced persons. He stated that a legal regime to regulate humanitarian assistance while protecting the interests of the asylum seekers could ensure the protection and preservation of the sovereignty of a state and its national interest.

He proposed that the Secretariat of the Asian-African Legal Consultative Committee could second a member of the staff of the Secretariat to the UNHCR for a mutually agreed period to draft a model legislation on refugees. The proposed legislation, he stated, could be modular with alternative provisions

designed to safeguard the national interests of states. The legislation could thus present several models which could be submitted to member States of the Committee for their observations, comments, additions and amendments. The modular legislation could thereafter, be considered at the next session of the Committee and perhaps approved. Thereafter states which desired to do could enact legislation to be drafted with the technical assistance that the UNHCR was offering to the Secretariat of the Committee.

The *Delegate of Uganda* stated that the figures relating to the world refugee population supplied by the representative of the UNHCR represented only those who were registered. In his view the actual figure is about half as much more i.e. there are at least 30 million refugees the world over.

The *Delegate of Iran* stated that the studies of the Secretariat of the Committee and raising the issue in the annual meetings of the AALCC showed importance that the organization attached for refugee problems particularly in Asia and Africa. He added that the importance of raising the issue in the Committee originated from the fact that the majority of them as stated by the distinguished representative of UNHCR, were from developing countries mainly Asian and African ones, and all efforts made at global level to solve this problem had failed to put an end to this painful tragedy of the late years of the present century.

He said that the Islamic Republic of Iran was host to 5 million refugees and as one of the signatories of 1951 convention on the status of Refugees and the protocol of 1967, it had made all efforts to provide facilities for refugees. Although these measures had always been appreciated by the concerned international organizations such as Red Cross and UNHCR during the recent years, the International aid to refugees in Iran had been insignificant when compared with other countries where smaller number of refugees are living.

He further stated that his delegation would like to underline the responsibility of states who made people refugees. In the view of his delegation the measures and policies of these states were the main cause for the displacement of their nationals and these countries should remain accountable and should not shun their responsibilities. The prime responsibility of these countries was to create situation in their country to put an end to more exodus of refugees to other countries. Mass expulsion of the nationals of a country which lead to displacement and had been prohibited by international conventions, should be condemned by the concerned legal organizations such as AALCC.

He recalled that when the question was discussed at the Thirty-first annual session of the Committee his delegation had emphasized that displacing a

number of nationals of a country can not be used as a justification to deny their nationality. He observed that refugee-receiving countries had the right to facilitate the repatriation of the refugees to the country of origin whenever they realized that the situation in that country had become normal. His delegation also wished to emphasize the principle of observance of laws of receiving country by refugees.

He stated that his government had found useful the Brief prepared by the Secretariat. The Workshop on Refugees initiated by the Committee in 1991 in New Delhi in which his delegation participated, was among the positive steps taken by the Secretariat. That meeting dealt with a range of refugees' issues in Asia and Africa, particularly their right of repatriation. He expressed appreciation to the Secretariat of the Committee for preparing the document in which the measures and studies of AALCC from 1960s on had been clearly elaborated, and hoped that these studies would provide a better prospect for Asian and African countries in their efforts to solve this humane problem of the present century.

The *Delegate of Kenya* expressed his appreciation for the Briefs prepared by the Secretariat. He stated that his country had received and has been a host to a large number of refugees during the last twenty years. He favoured the establishment of a legal mechanism to govern the status and treatment of refugees. He was of the view that countries responsible for generating the exodus of refugees should take steps to eliminate causes for the refugee flow.

His Government has had mixed experience with refugees both pleasant and unpleasant. His Government had assisted many refugees to put their lives together and earn a living. When conditions had improved in their country of origin, his government had encouraged the refugees to return and provided assistance to those who wished to return to their countries. During the last four years the presence of a large number of refugees from Somalia had however created major problems. The influx of large numbers had an adverse effect on the economy. Besides many refugees had come armed with guns which they used or put into the hands of criminals to create a climate of insecurity which had inhibited foreign investment in Kenya. On the other hand Kenya had only received limited assistance from the international community.

Speaking on the impact of refugee camps on the environment, he emphasized that environmental disaster is looming large in areas where refugees had settled in large numbers and cut down trees, on a large scale for fuel.

The *Delegate of India* expressed the view that the question of drafting a model legislation on refugees had not been debated exhaustively. He observed

that there were many reasons underlying the flow of refugees and while States had and would honour their obligations to receive asylum seekers at their borders, the significance of the practical problems posed by internal displacement could not be under-estimated. He, however, had reservations about drafting a model legislation as in his view consideration needed to be given to the question of deterrence of refugee flow. Besides, the delegate argued, the experiences varied from country to country and from continent to continent. He did not favour an imposition of ideas which had not been voluntarily accepted following a detailed discussion. In his view there were many aspects of the proposed legislation which needed to be deliberated with care. These included the issue related to the definition of terms and the scope of the proposed legislation. His delegation was opposed to the involvement of the UNHCR in the drafting of a Model legislation.

The *Delegate of Egypt* stated that a number of questions raised by his delegation when the item was considered at the Thirty-second session of the Committee had not been satisfactorily answered. He supported the view of the Indian delegate.

The *Representative of the UNHCR* stated that his office had only offered technical assistance in drafting a model legislation. He pointed out that member States of the Committee would remain at liberty to consider the substantive and political questions related to the acceptance or enactment of the proposed legislation.

The *Secretary-General* clarified that the decision to draft a model legislation was taken at the Islamabad Session (1992) following upon a recommendation of the Workshop on Refugee Law held in New Delhi in 1991. He pointed out that the preparation of a model legislation by the Secretariat with the collaboration of the UNHCR would not make it mandatory for any member State of the Committee to enact a law. On the other hand, a model legislation prepared jointly by the AALCC and the UNHCR could be useful for many member countries in developing their own laws to assist refugees.

The *Delegate of India* emphasized that his reservation was mainly on the ground that the proposed structure of the model legislation had not been extensively debated at any session after the deliberations in the Workshop. His delegation was not opposed to the proposed modular legislation if it was a question of purely technical assistance, and was voluntary and the proposed legislation would not commit or bind any of the member States of the Committee.

The *Delegate of Egypt* clarified that his support of the Indian reservation

was on substantive matters and not on the question of drafting a model legislation.

The *Delegate of Uganda* said that in the opinion of his delegation the draft resolution was very innocuous. He was of the view that the Secretariat should draft a model legislation which could be adopted by those who required it.

The *Representative of the Organisation of African Unity* stated that the proposed model legislation could be a useful instrument and urged the Committee to complete its work on the subject. He pointed out that an OAU and UNHCR Working Group had in 1980 drawn up "National Guidelines on Legislation on Refugees" which had been found useful by several African countries. Both Zimbabwe and Swaziland had relied heavily on those guidelines in the formulation of their national legislations. He pointed out, however, that the OAU/UNHCR Guidelines needed to be revised to meet new challenges.

The *Delegate of Turkey* expressed the view that the delegate of India had advised caution in the interest of good and orderly work. This did not amount to opposition to such a model law.

The *President* pronounced that the proposed model legislation was an ongoing project which could be completed within the existing resources supplemented by technical assistance from the UNHCR and the OAU.

(ii) **Decisions of the Thirty-third Session (1994)**
**Agenda item: "Status and Treatment of
Refugees and Displaced Persons"**

Adopted on January 21, 1994

The Asian-African Legal Consultative Committee at its Thirty-third Session:

Having considered the Secretariat briefs on Model Legislation on Refugees contained in document No. AALCC/XXXIII/Tokyo/94/3 and the Establishment of Safety Zones contained in document No. AALCC/XXXIII/Tokyo/94/4;

And having heard with appreciation the statement of the Deputy Director, the Bureau of Asia and Oceania of the United Nations High Commissioner for Refugees;

And having heard also the statement of the representative of the Organization of African Unity;

1. *Appeals* to Member States to take all measures to eradicate from their countries the causes and conditions resulting in their nationals being forced to leave their countries and becoming refugees;
2. *Urges* the member States who have not already done so to ratify or accede to the Convention on the Status of Refugees, 1951 and the 1967 Protocol thereto;
3. *Takes note* of the general outline of the programme of work proposed by the Secretariat on the Model Legislation which is still to be considered by the Committee;

4. *Decides* to continue with the task of the preparation of a model legislation in close co-operation with UNHCR and OAU in light of the codified principles of international law and the practice of States in the region;
5. *Expresses* appreciation to the UNHCR for the offer to assist the AALCC to draft the model legislation;
6. *Decides* in the context of paragraph 4 above to second a professional staff officer of the Secretariat to the UNHCR, for a specified period to be mutually agreed, to draft the detailed modular draft legislation;
7. *Recommends* that such draft legislation be transmitted by the Secretariat to all Member States, prior to the Thirty-fourth Session, for their consideration, amendments, additions on subtractions;
8. *Recommends further* that such duly amended draft legislation be considered at the Thirty fourth Session of the Committee for its possible adoption;
9. *Directs* the Secretariat to include the item "Status and Treatment of Refugees" on the agenda of the Thirty-fourth Session of the Committee; and
10. *Directs* the Secretariat to study further the concept of Safety Zones and to analyse the role played by the United Nations and UNHCR in particular in the recent past in that context.

(iii) Secretariat Briefs

A. Model Legislation on the Status and Treatment of Refugees

It is estimated that there are 19 million refugees in the whole world at present. Africa alone has the unenviable record and the dubious distinction of being host to some six million refugees and a further twelve million displaced persons within or outside the borders of the country of their origin.

Concerning the legislation on refugees, the African region is more enlightened by virtue of the OAU Convention 1969. In practice their treatment of refugees is generous, in spite of their political, economic and social hardships. Zimbabwe Refugee Act, 1983 together with the OAU Convention will be of great importance in tackling this problem. The situation in the Asian region is quite different. It is large groups or mass exodus which seek protection in this region as opposed to individuals seeking asylum in other parts of the world.

Of the Eighteen AALCC member states who are parties to the Convention regime only eight States in Asia have so far ratified the Convention relating to the Status of Refugees 1951,¹ and its 1967 protocol.² As a result, many states in this region have no binding legislation on refugees. The only guiding principles are Bangkok Principles, 1966 and the 1970 addendum thereto which are recommendatory in nature. Therefore a regional solution to this problem is necessary. The Model legislation proposed to be taken up by AALCC could be particularly useful for the Asian region and could deal with the mass

1. Botswana, China, Cyprus, Egypt, Ghana, Iran (Islamic Republic of) Japan, Kenya, Nigeria, Philippines, Republic of Korea, Senegal, Sierra Leone, Somalia, Sudan, Turkey, Tanzania, and Yemen.

2. *op. cit.* Note 2.