

the events and developments on the occupied territories and decided to include the item in the Agenda of the Thirty-fourth Session.

It may be recalled that on September 13, 1993 the PLO Chairman and the Israeli Prime Minister had signed the Declaration of Principles on Interim Self-Government Arrangements.<sup>6</sup> The Agreement opened the way for Palestinian self-rule providing for Israel withdrawal and the establishment of an interim Palestinian self-government, first, in the Gaza Strip and in the West Bank town of Jericho and later in the rest of the West Bank. The Declaration of Principles deferred the issue of Israeli settlements to the permanent status negotiations which are to begin no later than the beginning of the third year after the start of the interim period. In the meantime Israel retains legal and administrative authority over these settlements and their inhabitants and is responsible for their security. Under the terms of the Declaration of Principles on Interim self-Government arrangements the permanent status negotiations on the issue of Jerusalem are to start not later than the beginning of the third year of the interim period. Other sensitive issues such as the return of Palestinian refugees, future boundaries and the status of Palestine are envisaged for further negotiations which are to commence no later than two years after the Israeli withdrawal marks the beginning of a five-year interim period at the end of which it is expected that the negotiations will lead to a permanent settlement implementing security resolutions 242 (1969) and 338. It may be stated that the Committee at its Thirty-third Session *inter alia* welcomed the signing of the abovementioned accord of September 1993.

Thereafter on May 4, 1994 the Palestine Liberation Organization and the State of Israel signed an Agreement on the Gaza Strip and the Jericho Area. The accord concluded in Cairo *inter alia* provided for Israelis withdrawal from the Gaza Strip and Jericho Area and granted Palestinians a measure of self-government. The accord of May 4, 1994 grants Palestine is control over their internal political arrangements and daily affairs including elections, tax collection and the adoption and enforcement of legislation. The Agreement marks the beginning of the five-year interim period for negotiating a settlement of the permanent Status of the Occupied territory. Since then a twenty-four members Palestinian authority vested with legislative and executive powers has been established. A Palestinian police force has also been established.

The Middle East Peace Conference convened at Madrid on October 31, 1991 and the mutual recognition between the State of Israel and the

6. A/48/486-S/26560, Annex. Also in *International Legal Materials* Vol. (1993) p. 1525.

Palestine Liberation Organization, as the representatives of the Palestinian people was welcomed by the General Assembly by its resolution 48/58 when it expressed its full support for the "achievements of the peace process thus far, in particular the Declaration of Principles on Interim Self-Government Arrangements signed by Israel and the PLO and the Agreement between Israel and Jordan on the common Agenda. The General Assembly went on to term these developments an important initial step in achieving a comprehensive, just, and lasting peace in the Middle East and urged all parties to implement the agreements reached.

The General Assembly at its Forty-eighth Session in its resolution on the Peaceful Settlement of the Question of Palestine *inter alia* stressed the significance of upcoming negotiations on the final settlement and reaffirmed the following principles for the achievement of a final settlement and comprehensive peace:

- (a) The realization of the legitimate national rights of the Palestinian people; primarily the right to self-determination;
- (b) The withdrawal of Israel from the Palestinian territory occupied since 1967, including Jerusalem, and from other occupied Arab territories;
- (c) Guaranteeing arrangements for peace and security of all States in the region including those named in Resolution 181 (III) of 29 November 1947, within secure and internationally recognized boundaries;
- (d) Resolving the problem of the Palestinian refugees in conformity with the General Assembly resolution 194 (III) of 11 December 1948 and subsequent relevant resolutions;
- (e) Resolving the problem of the Israeli Settlement which are illegal and an obstacle to peace, in conformity with relevant United Nations resolutions; and
- (f) Guaranteeing freedom of access to Holy Places, religious building and sites.<sup>7</sup>

Similar resolutions were also adopted at the Forty-ninth Session of the General Assembly.<sup>8</sup>

It may be mentioned that the resolution entitled "Middle East Peace

7. See General Assembly Resolution 48/158 D on the Peaceful Settlement of the Question of Palestine.

8. See General Assembly Resolution 49/62-D of 14 December 1994 and 49/88 of 16 December, 1994.

Process" was sponsored by more than 100 States and received an unprecedented majority and that the resolution on *intifadah* which the General Assembly had adopted every year since its Forty-third Session (1988) was deferred.

Against this backdrop of the progress of work since the item was first placed on the work programme of the Secretariat, the recent developments and the resolution of the Committee at its Thirty-third Session the Committee may wish to consider whether the Secretariat has exhaustively dealt with the Legal Aspects of the item referred to it and determine the course of future work of the Secretariat on the matter.

## RESOLUTION ON DEPORTATION OF PALESTINIANS IN VIOLATION OF INTERNATIONAL LAW, PARTICULARLY THE GENEVA CONVENTION OF 1949 AND THE MASSIVE IMMIGRATION AND SETTLEMENT OF JEWS IN THE OCCUPIED TERRITORIES.

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

*Recalling* the resolutions adopted by the previous AALCC sessions on the Palestinian question;

*Conscious* of the responsibility of AALCC to uphold International Law and support peoples fundamental rights; and

*Taking into consideration* the United Nations Charter provisions concerning the right of self-determination, the fourth Geneva Convention of 1949 and the various UN General Assembly and Security Council resolutions on the question of Palestine in particular those relating to deportation and building of settlements;

*Taking note* of the historic accord of principles signed on 13th September 1993 between P.L.O. and Israel;<sup>1</sup>

1. *Expresses* its concern at the continuing denial and deprivation of the inalienable legitimate rights of the Palestinian people including *inter alia* the right of self-determination, return and the establishment of an independent state on their national soil.

2. *Supports* the just cause of the Palestinian people and their struggle for self-determination and freedom;

3. *Condemns* Israel's policy in the Arab occupied territories and the deportation of Palestinian people from their indigenous homes and demands the repatriation of all Palestinians deported since 1967 in flagrant violation of Geneva Convention and the Declaration on Human Rights;<sup>2</sup>

4. *Strongly condemns* Israel's policy of immigration and the Settlement

1. The *Delegate of Islamic Republic of Iran* expressed the following reservation on this decision: "My delegation does not acknowledge the accord between P.L.O. and the other party, and while seeking the full realization of the inalienable rights of the Palestinian People would like to put on the record its reservation on some paras of this resolution which refer to this accord."

2. The *Delegate of Japan* expressed the following reservation on this decision: "Since the Committee met in Kampala last year, a historic event took place in the long history of the Middle East Peace Process. On the 13th September, 1993 "Declaration of Principles" has been signed between PLO and Israel at White House, Washington, in the presence of PLO

of Jews in the Palestinian and other Arab occupied territories in Golan Heights and South Lebanon and consider it an obstacle towards erecting just and comprehensive peace;

5. *Demands* that Israel respect the principles of International Law and all International Conventions which have a bearing on these matters including the release of prisoners and detainees in Israel jails and concentration camps;

6. *Condemns* Israel's policy of appropriation and illegal exploitation of the natural resources (particularly water) and the archaeological explorations of the occupied territories in contradiction to the principles of permanent sovereignty over natural resources;

7. *Welcomes* the signing of Accord of Principles between Palestine Liberation Organization and the Govt. of Israel and *considers* it an important breakthrough and a first step towards erecting a just durable and comprehensive peace in the Middle East.

8. *Calls upon* Israel to expedite its withdrawal from Gaza and Jericho areas to enable the P.L.O. establish the Palestinian National Authority over these territories;

9. *Requests* member states as well as other states and U.N. organs to extend moral and material support to the Palestinian National Authority in Gaza and Jericho;

10. *Requests* the Secretary-General of the Committee to continue to monitor the events and developments in the occupied territories of Palestine; and

11. *Decides* to include the item in the agenda of its 34th Session.

(Adopted on January 21, 1994)\*<sup>3</sup>

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Chairman Yasser Arafat and Israeli Prime Minister Ishaq Rabin. Japan strongly supports this peace process and the agreement reached between PLO and Israel. The Japanese Government maintains the position that deportation in question is not justifiable under the international law. However, the issues taken up in this draft resolution, including the question of deportation of Palestinians are now being negotiated as a part of its peace process between the parties concerned. Since the peace process is at a very crucial and sensitive juncture, we believe that the Committee, as a forum of legal experts, should not take a decision which may prejudice the on-going negotiations. For this reason, the Japanese delegation reserves its position on the resolution as a whole."

3. The *Delegate of Singapore* expressed the following reservation on this decision:

"Singapore takes the view that this draft resolution does not fall within the purview of the AALCC. The AALCC is a Legal Consultative Committee constituted to provide an advisory role to Member Governments on various international legal issues. A political statement such as the Palestinian draft resolution is not appropriate for consideration in this forum; it is more appropriate to be considered in a political forum such as the UN General Assembly.

Furthermore, no notice was given of the tabling of this draft resolution until this evening. It is not possible for Singapore to fully consider the draft and formulate the position.

## VIII. Report on the Work of The International Law Commission at Its Forty-Sixth Session

### (i) Introduction

The International Law Commission (hereinafter called the Commission or the ILC) established by General Assembly Resolution 174 (III) in 1947, is the principal organ of the United Nations to promote progressive development of international law and its codification. The Commission held its Forty-sixth Session in Geneva from May 2 to July 22, 1994. There were four substantive topics on the agenda on this Session. These included:

- (i) The Draft Code of Crimes Against the Peace and Security of Mankind;
- (ii) The Law of Non-Navigational Uses of International Watercourses;
- (iii) International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law; and
- (iv) State Responsibility.

It may be recalled that the General Assembly had by its Resolution 47/31 of December 9, 1993, *Inter alia* requested the Commission to continue its work on the draft statute of an international criminal court, as a matter of priority, with a view to elaborating a draft statute if possible at its Forty-sixth session in 1994. The General Assembly had called upon the Commission in this regard, to take into account the views expressed during the debate in the Sixth Committee, as well as any written comments that the Commission may have received on the draft articles proposed by the Working Group on a draft statute for an international criminal court established by the ILC at its Forty-fifth Session. That resolution had also requested the Commission to resume, at its Forty-

sixth Session, the consideration of the draft Code of Crimes Against the Peace and Security of Mankind. Finally, by that resolution the General Assembly had also welcomed the decision of the Commission to endeavour to complete in 1994 the second reading of the Draft Articles on the Non-Navigational Uses of International Watercourses.

Accordingly, the Commission held substantive discussions on these two subjects viz. the Non-Navigational Uses of International Watercourses and the Draft Code of Crimes Against the Peace and Security of Mankind. The Commission completed its second reading of the draft articles on the Non-Navigational Uses of International Watercourses and adopted the same together with commentaries thereto. It also adopted a set of draft articles on the Statute of an International Criminal Court and commenced the second reading of the draft Code of Crimes Against the Peace and Security of Mankind as adopted on first reading at its Forty-third Session in 1991. The Commission agreed that the work on the draft Code and on the draft Statute for an International Criminal Court should be coordinated. The other two items on the substantive agenda of the Commission viz. State Responsibility and International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law were also considered and are at different stages of work. Some notes and comments on these items which were subjected to detailed discussions during the Commission's Forty-sixth Session are contained in this chapter.

It may be stated that the AALCC attaches particular significance to the question of Non-Navigational Uses of International Watercourses as this topic is also on its work programme. The topic of Draft Code of Crime Against the Peace and Security of Mankind is also one to which the AALCC attaches great importance in view of the current international developments.

Finally, it may be recalled that the General Assembly had by its resolution 47/33 *inter alia* requested the Commission to consider planning of its activities and programme for the term of office of its members bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles. The Commission acting in pursuance of that request had at its forty-fifth session *inter alia* proposed to incorporate in its agenda the topics "The Law and Practice relating to Reservations to Treaties" and "State Succession and Its Impact on the Nationality of Natural and Legal Persons". The General Assembly at its forty-eighth session had by its resolution 48/31 *inter alia* endorsed the decision of the Commission to include in its agenda the abovementioned topics on the understanding that the final form to be given to the work on these topics

shall be decided after a preliminary study is presented to the General Assembly. Pursuant to the aforementioned endorsement the Commission at its recently concluded forty-sixth session, among other things, appointed Mr. Alain Pellet (France) Special Rapporteur for the topic "The Law and Practice relating to Reservations to Treaties". It also appointed Mr. Vaclav Mikulka (Czech Republic) Special Rapporteur for the topic "State Succession and its Impact on the Nationality of Natural and Legal Persons."

#### Thirty-fourth Session: Discussions

The *Secretary-General* while introducing the documents prepared by the Secretariat said that monitoring the progress of work of International Law Commission at its annual sessions was a Statutory obligation and as in previous years the Secretariat had prepared a brief of documents (AALCC\XXXIV\DOHA\95\1) on the work of the ILC at its forty-sixth session held in 1994. Recalling that an item entitled "The Statute of an International Criminal Court" was among the items on the agenda of the International Law Commission and the significance that member States of the AALCC attached to the establishment of an International Criminal Court and the debate that this topic had generated in the Sixth (legal) Committee of the General Assembly the Secretariat had organized a seminar on this topic. A report of the Seminar and on the debate in the Sixth Committee have been given in this Chapter.

The *Vice Chairman of the International Law Commission* (Ambassador Francisco Kramer) in his account of the progress of work on the forty-sixth session of the Commission stated that the Commission had examined three basic issues viz. (a) the Code of International Crimes; (b) the creation of an international criminal court; and (c) the difference between wrongful acts of an international nature and international crimes in regard to the international responsibility of States. As regards the draft code of crimes against the peace and security of mankind he said that the question of the scope of the draft code was of immediate relevance since the wording of certain provisions of the first part would necessarily differ depending on whether the code covered a large number of offences under international law or only those crimes that involved a fundamental infringement of the International public order. In that context the appropriateness of the current title of the draft Code had been raised, since while aggression could be considered a crime against the peace and security of mankind it was more difficult to characterise genocide or crimes against humanity as such, unless the concept of peace and security was very extensively interpreted.

Turning to the International Criminal Court he said that the Statute of the Court envisaged two categories of crimes over which the Court

had jurisdiction. The first was that of crimes under general international law namely genocide, aggression, serious violations of the laws and customs of war and crimes against humanity. The precise definition of which had been left to the draft Code of Crimes against the peace and Security of mankind. The second was that of crimes referred to in the treaties listed in the annex, which had been expanded to include the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The two categories were not mutually exclusive. On the contrary, there was considerable overlapping between them.

As for the difference between crimes and other wrongful acts he said that the Commission had adopted three articles on the question of countermeasures which had long been debated by the Commission. The Commission had adopted three articles on the subject: Article 11, which outlined the broad framework within which a State was entitled to resort to countermeasures: article 13, which dealt with proportionality; and article 14, dealing with prohibited countermeasures. Article 12, on the conditions to be met by the injured State for recourse to countermeasures to be lawful, was still outstanding, and article 11 might have to be reviewed in the light of the text that would eventually be adopted for article 12. Although articles 11, 13, and 14 had been adopted at the previous session, they had not been formally submitted in view of the fragmentary results that had been achieved on the issue.

The *Secretary-General* also introduced the item "The law of International Rivers" (Doc. No. AALCC\XXXIV\DOHA95\4). He outlined initially the background of the whole study since 1966. The initial reference was to outline the following: (a) definition of the terms "International Rivers" and (b) rules relating to utilization of waters of international rivers by the States concerned for agricultural, industrial and other purposes not connected with navigation. He also informed that a few draft articles were also prepared which, however, could not be finalized due to certain unclear provisions. The *Secretary-General* noted that, after a brief deferment, the item was revived upon a suggestion by the Government of Bangladesh to consider the item excluding areas which were under the consideration of the AALCC. Subsequently, it was noted, the AALCC Secretariat initially identified five areas for consideration.

These five areas for consideration were: (a) an examination of the draft articles after they were adopted by the ILC and to furnish comments thereon for consideration of the Sixth Committee and possibly before a diplomatic conference; (b) development of norms and guidelines for the legal appraisal of the validity or otherwise of any objection that may be

raised by one Watercourse State in relation to projects sought to be undertaken by another Watercourse State; (c) study the matter relating to navigational uses and timber floating in international watercourses; (d) study of other areas of international rivers such as agricultural uses; (e) study of State practice in the region of user agreements and examining the modalities employed in the sharing of waters in such watercourses as the Gambia, Indus, Mekong, Niger and Senegal.

He pointed out that the study before the Committee briefly outlined the route taken by this item in the last decade. He also pointed out that the study briefly highlighted the various studies prepared by the Secretariat in the light of ILC deliberations. With a view to update the study, the *Secretary-General* noted, a brief outline of the views of the AALCC Member Governments had also been included, particularly the discussions which had taken place at the Thirty-third Session. The summation of the study, he noted, incorporated the decision taken at the Sixth Committee.

The *Delegate of Egypt* noted that the topic concerning acts not prohibited by International Law giving rise to liability in future would be of greatest importance to the developing countries of Asia and Africa. In his view the interpretation of "significant harm" was crucial as many of the Asian-African States were technologically less equipped to foresee and manage the future risks. As regards the establishment of an International Criminal Court, the delegate wished to know the major conventions which deal substantively with the criminal legal aspects and applicable law adopted by them. Secondly, in his view, a case-by-case approach could be adopted to apply the criminal legal principles. He also noted that the ILC's draft was a proposal to the whole world and accordingly he wished for the treatment of the topic particularly for the AALCC, Member States.

*Prof. Francisco Kramer the Vice-Chairman of ILC* in his intervention referred to the Framework of the European Convention as a good basis in such areas as crime and its procedural mechanism. He also referred to the Antarctic Treaty which he noted provided a broad-based principles regarding the regulation and management of risks and damages, particularly concerning ecological elements. He drew the attention of the Committee towards the basic approach of the ILC i.e. not to create new principles, but only to provide mechanism for preventing future risks. He outlined various approaches, although divergent, between the developed and developing countries, such as concerning theory of fault as pursued by the West and the theory of direct responsibility favoured by the developing countries. As regards the methodological approach to be adopted by the countries of Asia and Africa, he stated that all of them should

move ahead and examine these carefully without losing initiatives to the West.

The *Delegate of Japan* informed the Committee about the recently concluded Ad-hoc meeting on the International Criminal Court held in New York from 3 April to 13 April, 1995. He informed the Committee about the focus of the discussions in the following major items; (1) Organizational aspects; (2) Jurisdiction—applicable laws; (3) Criminal procedure—Due process; (4) Budget and Administrative issues.

As regards the 'Organizational aspects, the delegate noted that most countries favoured the establishment of an ICC by treaty and in order to ensure universality, favoured to require a substantial number of countries ratifying the treaty for the treaty to come into force. As regards the relationship of the ICC with the UN, he noted that majority of the countries recognized that the ICC should have a relationship by concluding an agreement. The delegate pointed out that as regards jurisdiction the principle of *nullum crimen sine lege and non bis in idem* were emphasized. He also noted that most countries identified crimes listed in Article 20 of the ICC draft statute as too vague and insufficient for the implementation of the criminal justice. The delegate also referred to discussions concerning some of substantive aspects of jurisdiction. He noted that there were no concurrence of views on the role of the Security Council. As regards the procedure and due process, the delegate pointed out, there was a consensus that criminal procedures must be drafted and approved by States rather than leave it to the judges as embodied in the ILC draft. He informed the Committee of the establishment of an Expert Group to identify these procedures. As regards the budget and administration, the delegate noted, countries preferred, on the one hand, the Court to be financed by the States parties in the Treaty and on the other hand, some advocated for the general budget of the UN to support the court. He noted that the August meeting would discuss in-depth issues on jurisdiction and due process among others.

The *Delegate of Syria* favoured the adoption of the draft on Non-navigational Uses of International Watercourses as a framework convention. He also submitted the following observations for the consideration of the Committee; (1) To apply the present articles to cases of closed groundwater constituting a hydrological unitary whole; (2) To keep the definition of international watercourses as it is in article 2 and not to delete the term "flowing into a common terminus"; (3) To add to article 5 the text from its interpretation concerning what actually constitutes 'equitable and reasonable utilization and participation'; (4) provision for an International

Observer if one of the watercourse states sees such a necessity and this to be incorporated in article 17 and (5) Adding a new article i.e., article 34, equating the 'water' as valuable as 'territory' and therefore to apply measures according to UN Character.

The delegate outlined his comments on second report of the Special Rapporteur. The delegate did not agree with the deletion of the word 'flowing into a common terminus'. As regards the confined groundwater the delegate also agreed with the principle of not causing harm to others as envisaged in article 16.

The *Delegate of Sri Lanka* favoured the establishment of an International Criminal Court which must be impartial and with an objective criteria. While outlining these principles, the delegate noted, the issues concerning sovereignty and territorial integrity should be taken into account. He also commended on this count the flexible approach adopted by the ILC. He also briefly referred to the evolution of ICC principles and its reflection in the present draft text.

The *Delegate of People's Republic of China* viewed the establishment of an international criminal court as an issue which was politically sensitive and legally and technically complicated. In principle, the delegate noted, China maintained that the future International Criminal Court should only be complementary to domestic courts which would play the primary role in this regard. According to him the basis of jurisdiction of the Court should lie in the prior consent of and voluntary submission of cases by States. While calling for the revision of the draft the delegate noted areas which needed emphasis such as concerning the jurisdiction of the court and the role of Security Council. In the view of his delegation the diplomatic conference to establish an ICC should not be convened until the conditions were ripe and a consensus on the draft statute was generally reached among states.

The *Delegate of Ghana* referred to the importance of and need for an International Criminal Court. He noted, however, that the new world political and economic order in which might and influence play an important role in international relationship and particularly in the resolution of conflicts and violence in the world. According to the delegate, Africa has had to contend with conflict and violence with less degree of interest being shown in these conflicts situations as those shown by some members of the international community elsewhere. He stressed that the conflict situations in Africa were serious developments that had led to the commission of serious crimes of an international nature. He pointed out that it was because of the disparity and apparent discrimination in the treatment of