

desertification, particularly in Africa, the Inter-governmental Committee for a Framework Convention on Climate Change, and the Commission on Sustainable Development.

At its thirty-second session held in 1993 at Kampala, AALCC established an open-ended Working Group on Human Rights with the mandate of preparing a draft declaration on human rights, which was subsequently adopted as the Kampala Declaration on Human Rights. The text was circulated at the fourth session of the Preparatory Committee for the World Conference on Human Rights.

The thirty-third session of AALCC was held in Tokyo in January 1994 and was attended by a representative of the U.N. Secretary-General, the Chairperson of the Sixth Committee of the General Assembly, the Chairman of International Law Commission and representatives of UNHCR and the World Bank.

Consideration of the item at the 49th Session of the General Assembly (1994)

On October 25, 1994, the 43rd Plenary Meeting of the Forty-ninth Session of the General Assembly of the United Nations reviewed the Agenda item 20 entitled "Co-operation between the United Nations and the Asian-African Legal Consultative Committee". The Report of the Secretary-General of the United Nations (Document A/49/262) and Draft Resolution (A/49/L.4) on this item had already been circulated to the delegates.

The representative of Japan made a statement in the course of which he introduced draft resolution (A/49/L.4) which was sponsored by China, Cyprus, Egypt, India, Indonesia, Japan, Kenya, Nigeria, Pakistan, Philippines, Qatar, Sudan and Uganda. Statements were also made by the representatives of Germany (on behalf of the European Union and Austria), Indonesia, Sri Lanka, Egypt, India, Pakistan and China.

In accordance with General Assembly resolution 35/2 of 13 October 1980, the Secretary-General of the Asian-African Legal Consultative Committee made a Statement.

Mr. C. Yamada (Japan) stated that since the granting of observer status to the AALCC, co-operation between the two organizations had grown. Currently, 44 countries were members of the Consultative Committee. He reviewed the AALCC's work on refugees and displaced persons, and in other areas. The Member States of the AALCC hoped for future growth

and expansion of co-operation with the United Nations. He hoped the draft resolution would receive unanimous approval.

Mr. Ernest Martens (Germany) speaking on behalf of the European Union and Austria, welcomed the activities of the AALCC in regard to the work of the Sixth Committee (Legal) and the United Nations Decade of International Law. In his view, the Committee's regional arbitration centres in Kuala Lumpur and Cairo had contributed to the settlement of disputes in economic and commercial transactions. He supported the opening of another centre in Nairobi. He was also of the view that many other aspects of the Committee's work, such as that connected with refugees, were directly relevant to the work of the United Nations and its agencies. He looked forward to the forthcoming AALCC study on Modular Legislation on the Rights and Duties of Refugees.

Mr. Gatot Suwardi (Indonesia) stated that the AALCC undertook work that was supportive of the United Nations in areas of the ratification of major conventions and treaties, and rendering assistance to the developing countries concerning items before the Sixth Committee. Indonesia, attaching great importance to the Law of the Sea, had suggested that the item be included on the AALCC agenda. The AALCC's initial work in that area had been to assist developing countries in their efforts relating to the United Nations Conference on the Law of the Sea. Since then it had focussed on the exclusive economic zone, breadth of the territorial sea, archipelagos, straits used for international navigation, marine population and scientific research. It had also supported the ratification and entry into force of the Convention on the Law of the Sea.

Generally, the AALCC had broadened its objectives to provide a forum for co-operation in trade and economic relations, he continued. In the field of economic and commercial transactions, two regional centres had been established, one in Kuala Lumpur and another in Cairo. Reviewing the AALCC's work in areas such as refugee problems and the control of narcotic drugs and psychotropic substances, he said that the AALCC had benefited the countries of the Asian-African Region, and had also had impact in projecting the interests of the international community.

Mr. Stanley Kalpage (Sri Lanka) said that the AALCC had developed as an invaluable forum for its members to discuss contemporary issues of international law and to provide an Asian-African dimension in the progressive development and codification of such laws. The AALCC's greatest impact had been made through its work relating to the Conference on the Law of the Sea; the Committee had a continuing crucial role to

play in that field. Noting the work undertaken in co-operation with the United Nations; he said, the work on the preparation of model legislation on the status and treatment of refugees, the examination of the novel concept on the establishment of a safety zone for displaced persons in their country of origin, would have a positive impact on the emerging law in those areas. Continuing co-operation between the United Nations and the AALCC was imperative if the Committee was to continue to discharge its invaluable task.

Mr. Karem Mahmoud (Egypt) said his country had always worked in close co-operation with the AALCC. The regional centre for arbitration in Cairo had made a great contribution. Egypt reaffirmed its full support for the work of the Committee.

Mr. Bhubaneswar Kalita (India) said the AALCC acted as a forum to project the views of Asian and African States in the evolution of new international legal regimes to suit the needs of the developing countries and the changed character of the international society. At a recent ministerial meeting of the Non-Aligned Movement, ministers had called upon the Secretariat to assist in reviewing ongoing codification and changes in international law in different spheres. He suggested that the co-operation between the United Nations and the AALCC should cover, as a matter of priority, the request made by the Non-Aligned Movement to the Secretariat. The Committee's work on International Economic Co-operation for Development was an area of special interest. The AALCC played a useful role in promoting the understanding by developing countries of developments in international law.

Mr. Khalid Jawed Khan (Pakistan) supported the draft resolution and noted with satisfaction the continuing efforts of the Committee towards strengthening the role of the United Nations and its various organs. The areas of co-operation between the two organizations had significantly widened and now covered matters in economic and humanitarian fields, as well as international law. His country attached importance to the active participation of the Committee in the sessions of the General Assembly, the International Law Commission, the United Nations Commission on International Trade Law (UNCITRAL) and in matters pertaining to the Law of the Sea. It also commended promotion by the Committee of wider recourse to the International Court of Justice. The establishment of two regional arbitration centres at Kuala Lumpur and Cairo for the settlement of disputes in economic and commercial transactions was a welcome step. Bilateral agreements for promotion and protection of investments generated wider flow of capital and technology to the

developing countries in the Asian-African region. Pakistan also welcomed the initiative of the Committee to prepare a legal guide on joint ventures, similar to the one prepared by UNCITRAL on drawing up international contracts for industrial works.

Mr. Li Zhaoxing (China) said that the AALCC had increased its influence in the international arena and made important contributions to the progressive development and codification of international law. Since 1980, the co-operation between the United Nations and the AALCC had grown closer. The AALCC had adjusted its work programme to give high priority to matters of immediate concern to the United Nations and attached great importance to its co-operation with the International Law Commission. In support of the decision by the General Assembly to hold a Decade of International Law, the AALCC had identified issues involved in and possible activities for the Decade. With the Government of Qatar, the AALCC had held a meeting on international law in Doha, in March 1994, to promote the Decade. The AALCC had also urged its members to accede to or ratify as soon as possible the United Nations Convention on the Law of the Sea. It continued to give priority to the international instruments adopted at the United Nations Conference on Environment and Development (UNCED), especially the implementation of Agenda 21. The AALCC had attended many international meetings in the field of environment and development, especially the meetings of the Intergovernmental Negotiating Committee to elaborate an International Convention to Combat Desertification. China hoped that the effective co-operation between the United Nations and the AALCC would be further strengthened.

Mr. Tang Chengyuan, Secretary-General of the AALCC, said the Committee had co-operated with the International Law Commission since its inception. It had provided assistance to the delegations of its Member States attending diplomatic conferences convened by the United Nations. In the context of the Third United Nations Conference on the Law of the Sea the Committee had also emerged as a global forum for the dialogue between the industrialized and developing countries. Such concepts of the Convention on the Law of the Sea as the exclusive economic zone and archipelagic states had originated in its deliberations. The activities of the AALCC in the sphere of economic relations and trade law had also been complementary to the work of the United Nations, to the United Nations Conference on Trade and Development (UNCTAD) and to United Nations on International Trade Law (UNCITRAL). A Special Meeting on Privatization, convened by the AALCC in Tokyo in January, 1994 had

produced a text for legal and institutional guidelines for privatization programmes.

Lately the AALCC had focussed attention on the efforts of the United Nations in such areas as the Agenda for peace, Environment and Sustainable Development, international protection of refugees and the human rights. Referring to the Conference on International Legal Issues organised in co-operation with Qatar in March 1994, he said it had deliberated on such matters as the protection of the environment, peaceful settlement of disputes, the new international economic order and humanitarian law. The AALCC had also participated in the UNCED which had culminated in the adoption of Agenda 21, and the international conventions on climate change and biological diversity. It had attended the World Conference on Human Rights in Vienna in 1993 and had also been working with both the United Nations High Commissioner for Refugees (UNHCR) and the OAU for the development of international refugee law. At present, it was focussing on the establishment of safety zones for displaced persons and on the formulation of model legislation on refugee protection.

The Assembly then adopted, without a vote, the resolution 49/8 on co-operation between the United Nations and the AALCC, as orally amended. By the terms of the resolution, the General Assembly noted with satisfaction the continuing efforts of the AALCC towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Consultative Committee. The Assembly also noted with satisfaction the progress towards enhancing co-operation between the two organizations in wider areas. The Assembly noted with appreciation the decision of the Committee to participate actively in the programmes of the United Nations Decade of International Law and of Environment and Sustainable Development. While requesting the Secretary-General to submit a report on continued co-operation at its fifty-first session, the Assembly decided to include in the provisional agenda of that session the item on co-operation between the United Nations and the AALCC.

Co-operation between the United Nations and the Asian-African Legal Consultative Committee, Resolution 49/8 adopted on 25 October 1994

The General Assembly

Recalling its resolutions 36/38 of 18 November 1981, 37/8 of 29 October 1982, 38/37 of 5 December 1983, 39/47 of 10 December 1984, 40/60 of 9 December 1985, 41/5 of 17 October 1986, 43/1 of 17 October 1988, 45/4 of 16 October 1990 and 47/6 of 21 October 1992.

Having considered the report of the Secretary-General on co-operation between the United Nations and the Asian-African Legal Consultative Committee.

Having heard the statement made by the Secretary-General of the Asian-African Legal Consultative Committee on the steps taken by the Consultative Committee to ensure continuing, close and effective co-operation between the two organizations,

1. *Takes note with appreciation* of the report of the Secretary-General.
2. *Notes with satisfaction* the continuing efforts of the Asian-African Legal Consultative Committee towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Consultative Committee;
3. *Notes with satisfaction* the commendable progress towards enhancing co-operation between the United Nations and the Consultative Committee in wider areas;
4. *Notes with appreciation* the decision of the Consultative Committee to participate actively in the programmes of the United Nations Decade of International Law and of environment and sustainable development;
5. *Requests* the Secretary-General to submit to the General Assembly at its fifty-first session a report on co-operation between the United Nations and the Consultative Committee;
6. *Decides* to include in the provisional agenda of its fifty-first session the item entitled "Co-operation between the United Nations and the Asian-African Legal Consultative Committee".

(iii) AALCC's Legal Adviser's meeting, New York : 27th October 1994

The AALCC Legal Adviser's Meeting was convened at the United Nations Headquarters in New York on 27th October 1994, under the Chairmanship of Mr. Chusei Yamada, Ambassador of Japan to India and the then President of the AALCC. The representatives from the following member and associate Member States participated in the meeting:— Bangladesh, China, Egypt, Ghana, India, Indonesia, Japan, Jordan, Libya, Malaysia, Myanmar, Nigeria, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Uganda, Yemen and Botswana.

Permanent Observer: Australia

Non-Member States: Algeria, Canada, France, Malawi, Mexico, Morocco, Mozambique, Namibia, South Africa, Togo, Tunisia, United Kingdom, Zimbabwe.

Mr. Hans Corell, the Legal Counsel of the United Nations spoke on the topic 'Law of the Sea'. He stated that the entry into force of the Convention on the Law of the Sea would have impact on the activities of the United Nations in two major areas, one being the establishment of new institutions under the Convention, and the other being activities and functions to be carried out by the Secretary-General in direct response to and in accordance with provisions of the Convention. He said in the past, the Secretary-General of the United Nations had emphasized that the Law of the Sea was a specialized field of international relations on a global scale, encompassing important aspects of international law, political considerations and economic and social dimensions. This fact remained as true and valid as ever. He expressed the hope that AALCC would continue to support the implementation of the Convention on the Law of the Sea and fully carry out the mandate of the Secretary-General in that regard.

The President of the International Court of Justice, Mr. Mohammed Bedjaoui made a reference on some problems relating to the implementation of the decisions of the International Court of Justice. He said that it was no use wasting capital and energy if the final decision of the ICJ in general and in the peaceful settlement of disputes was not executed through the legal system. The decisions often were in the nature of advice, consultative opinions, which could be binding or decisive.

In this regard, he referred to the Headquarter's Agreement between the U.N. and the U.S.A. (Section 21) and the Convention on Privileges and Immunities of the U.N. (Section 30). He also touched upon the awards and ordinances of the Court and made mention of Articles 59, 60 of the Court's Statute. Speaking about the implementation of the Court's decisions he touched upon Article 93 of the Charter of the U.N. dealing with Member and Non-member States, Parties to the U.N. Charter and/or to the ICJ and those not Parties thereto. He also referred to the territorial and border disputes and cited examples of Libya and Chad; Burkina Faso and Mali. Implementation difficulties were found in the case of Military and para-military activities in Nicaragua (Nicaragua versus US).

The Charter offered a mechanism through which a State with the help of the Security Council can obtain the implementation of the Court's order but there too the veto power intervened.

The Chairman of the International Law Commission, Prof. Vereschetins, while stressing the relationship between the ILC and AALCC introduced the development of a new constitutional law in Russia.

The Deputy Director of UNHCR liaison office at the UN Ms. Pirkko Kourula, said the long standing co-operation between the AALCC and UNHCR had always been most fruitful. She expressed "there is a continued need to develop legal norms and establish new standards for addressing the protection of uprooted populations and for searching durable solutions to their plight, we have no doubt that the AALCC's contribution to the development of such norms and standards will continue to be significant.

The Chairman of the Sixth Committee informed the meeting about the work carried out by the Sixth Committee and pointed out the documents being recommended for adoption.

The Legal Advisers of India and China also addressed the meeting. They emphasised upon the significance and benefit of the meeting as well as the important role played by AALCC in respect of its efforts to popularise the rule of law in the Member States. They asked some questions relating to the recent development in the Russian Constitutional Law and the Convention on the Safety of United Nations and Associated Personnel.

The Secretary-General of the AALCC in his statement referred to the important legal issues on which the AALCC was presently focussing.

II. Law of the Sea

(i) Introduction

The topic 'Law of the Sea' was first taken up for study by the AALCC in 1970 at the initiative of the Government of Indonesia and has thereafter remained a priority item at the regular Sessions of the Committee. It has also been the subject of discussion at inter-sessional and working group meetings. Initially conceived as a programme of rendering assistance to Asian-African governments to prepare themselves for the Third United Nations Conference on the Law of the Sea through preparation of background papers and provision of opportunities for indepth discussions, the Committee has gradually emerged as a useful forum for a continuing dialogue on some of the major issues on this subject. Subsequent to the adoption of the United Nations Convention on the Law of the Sea 1982, the Committee at its Twenty-third Session held in Tokyo in May 1983, approved the future programme of work on this subject. This included a comprehensive set of broad issues such as (1) The encouragement of taking steps towards ratification of the Convention; (2) Undertaking of studies from time to time on specific matters or issues of practical importance to member governments for the purposes of the implementation of the Convention; (3) Assistance to Governments in regard to the work of the Preparatory Commission; and (4) The examination of the question of promoting regional or sub-regional co-operation taking into account the interests of landlocked and geographically disadvantaged States.

Four specific topics were subsequently included in the programme of work and discussed at the Kathmandu (1985) and Arusha (1986) Sessions on the basis of preliminary papers prepared by the Secretariat. Among the four topics included in the programme of work was an item entitled 'Report on the Progress of Work at the PREPCOM', established in accordance with the Resolution I of the Third United Nations Conference on the Law of the Sea. This item had been considered at successive sessions of the Committee.

The item was last considered at the Thirty-third Session of the Committee held in Tokyo in 1994 whereat the Committee considered the Secretariat brief on the progress of work in the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea and the informal consultations under the auspices of the Secretary-General aimed at promoting dialogue and at addressing issues of concern to some States in order to achieve universal participation in the Convention. The Committee at that Session *inter alia* decided to inscribe on the agenda of its Thirty-fourth Session an item entitled "Implementation of the Law of the Sea Convention, 1982". The latest brief seeks to furnish an overview of some developments in the matters relating to the Law of the Sea.

This subject matter is one in which all the Member States of the AALCC are deeply interested and the significance of ratifying the Convention on the Law of the Sea cannot be over emphasized. This endeavour has hitherto been a modest step in the AALCC Secretariat's resolve to underscore the unified character of and to promote the universal adherence to the UN Convention on the Law of the Sea, 1982.

Thirty-fourth Session : Discussions

Introducing the item the *Deputy Secretary-General* (Mr. Essam Abdel Rehman Mohammed) recalled that the Committee at its Thirty-third session had *inter alia* decided to inscribe on the agenda of the Thirty-fourth session an item entitled "Implementation of the Law of the Sea Convention, 1982 and that the brief of documents prepared by the Secretariat Doc. AALCC/XXXIV/95/5 and 5A furnished an overview of developments relating to the entry into force of the United Nations Convention on the Law of the Sea, the establishment of the International Seabed Authority and the establishment of the International Tribunal for the Law of the Sea. Recalling that the Convention had entered into force on November 16, 1994, he pointed out that the General Assembly had in July 1994 adopted the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 1982. Pointing out that the July Agreement and Part XI of the Convention on the Law of the Sea were to be interpreted and applied together as a single instrument and that in the event of any inconsistency between the Agreement and Part XI of the Convention the provisions of the former instrument are to prevail, he said that the Agreement relates to nine matters viz. (i) Costs to State Parties and institutional Arrangements; (ii) The Enterprise; (iii) Decision-making; (iv) Review Conference; (v) Transfer of Technology;

(vi) Production Policy; (vii) Economic Assistance; (viii) Financial Terms of Contracts and (ix) the Finance Committee.

Turning to the International Seabed Authority he said that the first session of the Authority held in November 1994 to coincide with the entry into force of the Convention was largely ceremonial. The second session of the International Seabed Authority held in March 1995 concluded with the adoption of the rules of procedure. Although the issue of election of the 36 members of the Council of the Seabed Authority had generated a lot of debate no consensus was reached.

The *Observer for the International Ocean Institute* (Mrs. Mann Borgese) said that the entry into force of the UN Convention on the Law of the Sea, 1982 was surrounded by developments which pose new challenges. In her view the Agreement relating to Part XI of the Convention was seriously flawed and did not conform to the highest standards of international law. The Agreement of July 1994 had created an International Seabed Authority which was not viable mainly because the Agreement generated contradictions and weaknesses. The difficulties expressed in the election of the members of the Council in March 1995 demonstrated their infirmity. She pointed out in this regard that although the category of States to be included in the Council is taken from the Convention these categories of States are now treated as Chambers not only with regard to voting but even as regards the mode of their election. The chambers are in fact self-elected, since each group of States that qualified for each 'chamber' is allowed to nominate only as many candidates as will constitute that chamber. All the Assembly can do is, not to elect the members of the Council, but to rubber-stamp a self-election by the States that are to constitute the chambers. She emphasized that the danger on the horizon is that the Seabed Authority may come to be considered dysfunctional and die a quiet death. The Seabed Authority she stated is the only existing institutional embodiment of the principle of the Common heritage of Mankind. Advocating an evolutionary approach she said that the plan for the joint exploration of a first mine site for the Enterprise should be implemented if the Seabed Authority is to survive.

Referring to the dangers to the Law of the Sea Convention particularly Part V thereof she proposed the strengthening of regional fisheries organizations within the context of regional co-operation and organization.

Mrs. Borgese stated that the process of ratification and implementation of the Law of the Sea Convention had been overtaken by the UNCED and that the confluence of UNCLOS and UNCED had not only reinforced each other but also begin to transform the UN system. The UNCLOS and