

the Committee, of the Geneva Convention Relating to the Status of Refugees, 1951 and the 1967 Protocol thereto.

The workshop's proceedings were thereafter presented at the Thirty-first Session of the Committee held in Islamabad in 1992. While presenting the report, the attention of the Committee was drawn, *inter alia*, to two of the recommendations made by that workshop. The first recommendation urged the Committee "to consider the possibility of preparation of a model legislation" with the objective of assisting Member States in the enactment of national laws on refugees". The other recommendation urged the Asian-African States to move a step forward by considering adherence to the 1951 Convention Relating to the Status of Refugees and/or the 1967 Protocols" thereto.

During the course of deliberations on the Report of the Workshop, the Representative of the UNHCR stated that the Office of the UNHCR would cooperate with the AALCC Secretariat in the "elaboration of such a model, whether as a text, or principles to be considered in any such legislation or a combination of both". He added that the representatives of the UNHCR in the capitals of Member States would also be ready to assist. One delegate in supporting the formulation of model legislation of refugees by the secretariat expressed the view that the definition of the term "refugee" as stipulated in the Geneva Convention Relating to the Status of Refugees, 1951 and the 1967 Protocol thereto be amended so as to incorporate other qualifications and criteria such as those enumerated in the OAU Convention Governing the Specific Aspects of Refugee problems in Africa, 1969 and the Cartagena Declaration on Refugees, 1984.

The Committee at its Thirty-first Session adopted the aforementioned recommendations of the AALCC-UNHCR Workshop and approved of the suggestion to prepare a model legislation in cooperation with the office of the UNHCR.

At its Thirty-second Session in Kampala, in 1993, the Committee considered a "Preliminary Study on the proposed Model Legislation on Refugees" which presented an overview of the features of contemporary refugees law and a draft structure of the proposed model legislation on refugees. While introducing the brief prepared by the Secretariat the Deputy Secretary-General had stated *inter alia* that a comparative study of the definitions incorporated in the existing various international instruments did make out a case for the need to expand the scope of the term "refugee" to conform to the contemporary developments. The existing international instruments are: the Refugee Convention of 1951 and the 1967 Protocol thereto; the OAU Convention of 1969; the Cartagena

Declaration of 1984 and the Committee's Bangkok Principles of 1966 and Addendum I of 1970 thereto.

During the Thirty-second Session, the representative of the UNHCR observed that the initiative taken by the Committee in preparation of a model legislation on refugees would certainly contribute to the effective implementation of refugee law. In his view the incorporation of international standards for treatment of refugees into municipal law through domestic legislation would be an appropriate method and in some legal systems, perhaps, the only method of according international protection to refugees. He recalled that during the Arusha Conference on Refugees held in 1979 the African States had recommended that the Organization of African Unity (OAU) in cooperation with the UNHCR should elaborate a national legislation to serve as a guideline for African States. He also reiterated the UNHCR's offer to cooperate with and assist the Secretariat of the AALCC in the elaboration of a model legislation on refugees.

At that Session a view was expressed that since the 1951 Convention on the Status of Refugees does not cover all categories of refugees, it may be useful to formulate a comprehensive framework to deal with new refugee situations. The Committee at its Thirty-second Session decided *inter alia* 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" and directed the Secretariat to include the item "The Status and Treatment of Refugees and Displaced Persons" on the agenda of the Thirty-third Session of the Committee.

Pursuant to that decision the AALCC Secretary-General held informal consultations with the representatives of the Organisation of African Unity (OAU) and the UNHCR, in 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.

A round-table meeting of the representatives of the AALCC and the UNHCR was held in June 1993. The focus of discussions at that meeting was the proposed model legislation on refugees. During that meeting it was observed that the model legislation would be much more meaningful if it was incorporated into national laws because these are far more effective than international law principles, which may lack enforcement procedures.

It was also observed that the lack of willingness to accept international standards has been well illustrated by the unfortunate Bosnian example,

which has shown that the principles of international protection and *non-refoulement* have at best been reduced to good intentions. The national legislation would be more respected since being law of the land, there were better chances of its implementation.

Therefore, a national legislation, keeping all the factors in mind, would be useful. Of-course, the question of the incorporation of the existing principles could be left to individual States. It was agreed *inter alia*, to evolve ways and means of elaborating the concerning Treatment of Refugees, 1966 (hereinafter called the Bangkok Principles) and to continue work on the model legislation which would help States desirous of doing so to incorporate flexible principles on refugees into their existing legal instruments.

The Secretary-General also held consultations with several senior representatives of the Office of the UNHCR in Geneva in June 1993 whereat it was agreed to continue to study further and to identify Islamic Law principles which could help in promoting existing principles of refugees law.

Thereafter at a tripartite meeting of the representatives of the AALCC, OAU and the UNHCR the view was expressed that it was necessary to update the OAU/UNHCR guidelines on the national refugee legislation prepared in 1980. This could be done by appointing a consultant or consultants, if necessary. The goal should be to formulate flexible principles which could be incorporated into existing national legislation and priorities would have to be set as to what is to be dealt with first. What could be done, was to "build on" the existing African model. It was suggested that the model legislation could be drafted in "Blocks".

At its Thirty-third Session held in Tokyo in 1994 the Committee considered *inter alia* a draft structure of the 'Model Legislation on refugees', which the Secretariat had been called upon to prepare. The document prepared for the Tokyo Session had invited the Committee to give consideration to the extent and scope of the key term 'refugees' around which the proposed model legislation was to be drafted.

It was pointed out in this regard that in recent times the terms 'refugees' and "displaced persons" had come to be used almost as synonyms and whether the scope of the proposed model legislation should extend to displaced persons. In sum, that document had examined the complexities of a generally acceptable definition of refugees and displaced persons. After due deliberations, in the course of which several delegates approved the establishment of a legal mechanism to govern the status and treatment of refugees, the Committee at its Thirty-third session decided *inter alia*

to continue with the task of the preparation of a model legislation in close cooperation with the UNHCR and the OAU in light of the codified principles of international law and the practice of States in the region.

Pursuant to the mandate of the Tokyo Session the Secretary-General addressed a Note Verbale to the Member States of the Committee seeking their cooperation and to ascertain the policies of their governments on the problem of refugees. Annexed to the Note was a questionnaire the response to which would give essential information about the opinion of the Member States and would assist in the formulation of the Model Legislation on the Status and the Treatment of Refugees.

Of the Nineteen AALCC Member States who are parties to the Convention regime only nine States in Asia have so far ratified the Convention Relating to the Status of Refugees, 1951* and its 1967 Protocol. The only guiding principles apart from the 1951 Convention and the 1967 Protocol thereto are Bangkok Principles, 1966 and 1970 addendum thereto which are recommendatory in nature. Therefore a regional solution to this problem is necessary.

The proposed model legislation could be particularly useful for the Asian region and could deal with both the question of the mass refugee status determination and individual determination. Once the mass admission of refugee is allowed it will not be difficult for individual persons seeking individual refugee status to do so. The model legislation will be much more meaningful if it is incorporated into national laws as international law principles lack enforcement procedures. It is hoped that refugee law principles will be incorporated as part of the alien or immigration laws already in existence. The national legislation would therefore guarantee better chances of implementation of international principles relating to the status and treatment of refugees including the question of their rights as well as their concomitant obligations.

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

The topic "The Establishment of Safety Zones for the displaced persons in their country of origin" was taken up for the first time in 1985 at the suggestion of the delegation from Thailand, who felt that this would lessen the burden imposed upon the international community under the

* Botswana, China, Cyprus, Egypt, Ghana, Iran, (Islamic Republic of) Japan, Kenya, Nigeria, Philippines, Republic of Korea, Senegal, Sierra Leone, Somalia, Sudan, Turkey, United Republic of Tanzania, Uganda and Yemen. See U.N. Document ST/LEG/SER.E/12, *The Multilateral Treaties Deposited with the Secretary-General, Status as on 31 December, 1993.*

broader principle of "Burden Sharing".¹ It was discussed at the Twenty-sixth (Bangkok) and Twenty-seventh (Singapore) sessions of the Committee. At the Twenty-eighth session held in Nairobi the Secretariat presented 13 principles² which provided a framework for the establishment of Safety Zone. It was however decided in 1989 to defer the consideration of the item to a future session.

During the Thirtieth Session the delegate of Thailand referred to the earlier proposal made by his Government on the question of establishment of Safety Zones for the displaced persons in the country of origin and suggested that bearing in mind the recent developments, the topic on Safety Zones should be put on the agenda of the next session of the Committee for further study. The topic was further discussed at the Thirty-first and Thirty-second sessions. The Thirty-third session mandated 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.

The concept of "Safety Zone" in refugee law is relatively more recent as compared to the parallel concepts of "hospital and Safety Zones", "neutralised zones" and "demilitarised zones" under humanitarian law. But the basic objective of all these concepts is the same i.e.; to provide protection and assistance to persons affected by violent conflicts. While the humanitarian law concepts relate more to conduct of war and the protection of civilians in areas engulfed in an armed conflict, the safety zone concept in refugee law is primarily aimed at protection of persons who are displaced by conflict and are likely to seek or remain in refuge abroad unless they are protected in safe areas elsewhere in the country itself. Depending upon the nature and extent of the conflict, however, the two concepts are, more often than not likely to be overlap.

For the Thirty-fourth Session the Secretariat has formulated a "Framework for the Establishment of a Safety Zone for Displaced Persons in their Country of Origin." This draft incorporates basic principles enshrined in international humanitarian laws and the decisions of international organisations. The framework adopts a simple and uncomplicated structure to outline a solution to a complex issue and comprises twenty (20) provisions arranged under seven broad headings. The framework stipulates (i) the aim of the establishment of a Safety Zone; (ii) conditions in accordance with which a Safety Zone may be established; (iii) the supervision and

1. Burden sharing principles were adopted in 1987 by the AALCC, they were, an addition and improvement on the Bangkok Principles of 1966.

2. Doc. No. AALCC/XXVIII/89/3. Annexure I

management of the proposed zone; (iv) duties of the Government and the Conflicting Parties concerned; (v) the rights and duties of the displaced persons in the Safety Zone; (vi) protection of the officials of the International Organisations; and (vii) the closure of the Safety Zone.

The twenty odd provisions arranged under the seven subjects or titles mentioned above rely heavily on the thirteen principles that the AALCC considered at its Twenty-eighth session held in Nairobi in 1989 (hereinafter referred to as the Nairobi Principles). A careful reading of the twenty provisions of the present framework and the Nairobi Principles would reveal that ten of the thirteen propositions that comprised the Nairobi Principles have been elaborated in the aforementioned framework.

The framework proposes the establishment of a Safety Zone to "protect the life and property of displaced persons in their country of origin from consequences of armed conflicts by placing them under a UN protection area" when a "considerable number of displaced persons arises as a result of *armed conflicts* or *civil wars* and their life and property are threatened". These two provisions (1.1 and 2.1) read together furnish the *raison d'être* of the proposed Safety Zone. However the latter provisions quoted above (2.1) expands the purpose of the establishment of the proposed zone to provide safety and security from non-International Armed Conflicts.

The views expressed at the informal Seminar organised by the Secretariat in collaboration with the UNHCR in New Delhi on 23 September 1994³ is given as an Annex with this Chapter.

Thirty-fourth session : Discussions

Introducing the item the Deputy Secretary-General (Mr. Tohru Kumada) said that the Secretariat had prepared two studies addressed to two specific aspects of the subject: (i) Model Legislation on the Status and Treatment of Refugees (Doc. No. AALCC/XXXIV/Doha/95/2); and Establishment of Safety Zones for the Displaced persons in their country of origin (Doc. No. AALCC/XXXIV/Doha/95/3).

The Model Legislation had been prepared by the Secretariat in close co-ordination with UNHCR, and had been circulated to Member Governments. It followed, by and large, the structure of the proposed legislation presented at the Kampala Session and the debate on the term "Refugee" at the subsequent session held in Tokyo in 1994. The model

3. Summary Record of the Seminar on the "Establishment of a Safety Zone for the displaced persons in their country of origin" held in New Delhi on 23rd September 1994. Annexure II.

legislation comprises a preamble and thirty-six sections arranged in three parts viz. General Provisions; Rights and Obligations of Refugees; and, Organizational Arrangements; Read together they set out the *ratione personae* and *ratione materiae* of the proposed legislation and also provide for the establishment of an administrative/executive organ to deal with matters relating to the determination of refugee status as well as the rights and duties of refugees in the receiving state. The last part also makes provision for quasi-judicial review of decisions in matters relating to the status and treatment of refugees. The Secretariat had fulfilled its mandate and it was now for the Member Governments to give consideration to this model legislation and to make known to the Secretariat their comments and views thereon.

Turning to the subject of establishment of safety zones for displaced persons in their country of origin he said that the item had been taken up at the request of the Government of Thailand. At the Twenty-eighth Session (Nairobi) in 1989 the Secretariat had presented a set of 13 principles which provided a basic framework for the establishment of safety zones.

The study prepared for the current session focussed on the basic principles to establish the Safety Zone for the internally displaced persons during armed conflict. It dealt with the circumstances, under which a Safety Zone could be established, the involvement of the United Nations in the management of safety zones and the status of safety zones in international law.

The framework formulated by the Secretariat incorporate basic principles enshrined in international humanitarian laws. The framework adopts a simple structure to outline a solution to a complex issue and comprises a total of twenty provisions arranged under seven broad headings. The framework stipulates:

(i) The aim of the establishment of a safety zone; (ii) Conditions in accordance with which a safety zone may be established; (iii) The supervision and management of the proposed zone; (iv) duties of the Government and the conflicting parties concerned; (v) The rights and duties of displaced persons in the safety zone; (vi) Protection of the officials of the International organizations; and (vii) the closure of the Safety Zone.

This framework was substantially built upon the 13 principles that the AALCC had considered at its Twenty-eighth Session held in Nairobi in 1989.

The Representative of the UNHCR observed that of the world's total

present refugee population of some 24 million, the overwhelming majority were found in the countries represented in the AALCC. The majority of the world's internally displaced population were also found in these countries. It was therefore, imperative for the countries of the Afro-Asian region to continue to evolve a common approach to the humanitarian problems of refugees and displaced persons which continued to confront them.

He stated that it is in that context that the efforts of the AALCC in evolving legal principles and new approaches in dealing with the refugee problem in the African-Asian region assumed particular importance. In his view the need for a legal basis in relation to the status and treatment of refugees instead of *ad-hoc* approaches, which exist in many countries of the AALCC could not be overemphasized. He pointed out that the UNHCR was involved in the elaboration of background papers on both the subjects under consideration.

Commending the efforts of the Secretariat in elaborating the model legislation, he drew attention to the difficulties in attempting to produce one undifferentiated model text for use in all countries in the region since countries differed in their domestic norms and legal traditions and in addition may or may not be signatory to the 1951 Refugee Convention. In his view, it was therefore preferable to have a model legislation adapted to specific legal or regional system and concerns. He proposed establishing a working group comprising the AALCC Secretariat, the UNHCR, and Member States including both parties and non-parties to the 1951 Refugee Convention.

Finally, he stated that the UNHCR attached a great deal of importance to the AALCC since its membership included a large number of refugee producing and refugee-receiving countries and without whose co-operation the refugee problem could not be solved. A significant aspect of the Afro-Asian region, he pointed out was that it contained not only a large number of countries which were parties to the 1951 Refugee Convention but also many, particularly those from Asia, who were not. It had always been the hope that more exchanges between these two groups of countries would lead to more accessions to the 1951 Refugee Convention.

The *Delegate of Egypt* stated that the Seminar on the question of Establishment of Safety Zones held in New Delhi had provided an opportunity for an exchange of views among member-countries and academicians. In his view codification of legal norms in this field was premature. He was of the view that reconciliation of legal and humanitarian aspects is necessary as practice does not reflect a common minimal legal content. The practice hitherto had been on a case to case basis, and it was

premature to codify *ad hoc* practices. In his opinion the idea should be to bring safety to people rather than people to safety; this required comprehensive study of the reasons and origin of conflicts. Besides, the topic had a deep cultural dimension, and the AALCC should promote concentration of regional aspects and regional organizations as they are best equipped to deal with the problem. The UNHCR, ICRC and NGO's in his opinion could working on the functional rather than a legal level elaborate operational guidelines based on the past practices and taking into account the particular characteristics of each conflict and situation.

The *President* intervened to say that there was a great responsibility on the International Community to deal appropriately with the growing problem of refugees and displaced persons. It should not be dealt with on an *ad hoc* basis but on the basis of an International convention. As further steps were needed on the legal aspects, this could be done by way of discussions or by exchange of views in working group.

The *Delegate of the People's Republic of China* expressed the view that the Model Legislation on the Status and Treatment of Refugees would provide a suitable basis for the enactment of domestic legislation on refugees for AALCC member states and would be an appropriate supplement to the 1951 Refugees Convention and its Protocol of 1967. Its contents reflect the comprehension of the definition of refugees and the position and practice of the majority of the Asian-African States on the issue of refugees. The fundamental principles and provisions established in the model legislation would exert a positive influence for the solutions of the issue of refugees by Asian-African States, if they were incorporated into national laws.

Referring to the issue of Establishment of Safety Zones for displaced persons in the country of origin the delegate stated that it involved not only the problem of the legal status of the safety zones, but also the problem of the jurisdiction and the State Sovereignty of the Country of Origin and therefore needed a more profound and cautious study.

He was of the view that greater emphasis should be put by the International Communities upon the issue of refugees and continuous efforts should be made for the early resolution of the refugee problem. Permissible, timely and effective measures should be taken to facilitate the return of the refugees with safety and dignity.

The *Delegate of Ghana* was of the view that the model legislation on the status and treatment of refugees was complementary to the proposal for the establishment of a legal framework for the establishment of a

safety zones for the displaced persons in their countries of origin. He was of the view that the main problems involved in the establishment of the Safety Zones included those related to the conditions for the establishment of the Safety Zones, breakdown of the Central Government, the geographical area of the zone, State sovereignty etc. He wished more discussion on the topic.

The *Delegate of the Islamic Republic of Iran* observed that keeping in view the scope of the refugee problem for the world in general and the Asian-African countries in particular the effort of the AALCC's Secretariat in providing the model legislation was commendable. It had been sent to the concerned authorities of his Government for consideration and comments, but a brief review of its contents showed that many concerns of Asian and African countries in connection with the refugee problem had been taken into account and received proper attention of the Secretariat. He hoped that the studies provided by the Secretariat would provide better prospects for the Asian/African countries in dealing with the Refugee problems and help in its elimination.

The *Delegation of Sudan* was of the view that the study on the establishment of the Safety Zone should consider carefully as to whose consent was needed in establishing the Safety Zone, especially where a decision by the Security Council would have to be invoked. In such cases it would be preferable if the Security Council decision was invoked after consultations with the concerned parties.

The *Delegate of Palestine* commenting on the refugee problem felt that unless the requirements of the UN resolution 149 dealing with compensation to Palestinian refugees, and the restoration of family unity were not met the refugee problem in that area would remain unsolved. He felt that the AALCC was an important body which should espouse the cause of its member states, and voice them at the appropriate fora.

The *Delegate of Japan* considered it essential that States become parties to the Convention Relating to the Status of Refugees, 1951 and its Protocol of 1967, and take appropriate domestic legislative measures to implement them. The model legislation would be more helpful if it included more detailed provisions concerning refugee recognition procedures. He was of the view that the wider definition of refugees in the model legislation did not seem realistic, as it might lead to imposing additional burden on neighbouring countries, which provided protection and assistance to refugees, along with UNHCR.

He urged a more careful study of the proposed legal framework for

establishing the safety Zone. Although the proposed legal framework envisaged that the establishment of a Safety Zone was subject to the consent and co-operation of the Government and that of the conflicting parties. Such consent was not easy to obtain. There was a need to further study the establishment of safety zone without the consent of the Government and the conflicting parties concerned. Account needed also to be taken of the difficulties arising from the establishment of the Safety Zone controlled and supervised by foreign authorities in a territory of a sovereign State.

The *Delegate of Jordan* was of the view that the AALCC should support the Arab stand in solving the problems of refugees, displaced persons and deportees.

The *President* intervened to say that the topics of Status and Treatment of Refugees and the Deportation of Palestinian were two different items to be dealt with separately.

(ii) Decision on "Status and Treatment of Refugees"

(Adopted on 22nd April 1995)

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

Having considered the Secretariat briefs on Model Legislation on the Status and Treatment of Refugees Doc. No. AALCC/XXXIV/Doha/95/2 and the Establishment of Safety Zones for the Displaced Persons in their Country of Origin Doc. No. AALCC/XXXIV/Doha/95/3;

Appreciative of the statement and assistance of the Representative of the United Nations High Commissioner for Refugees;

Noting the proposals advanced by the Representative of the Office of the UNHCR.

1. *Appeals* to Member States to take all possible measures to eradicate the causes and conditions which force people to leave their countries and cause them to suffer unbounded misery;
2. *Urges* Member States who have not already done so to ratify or accede to the Convention relating to the Status of Refugees, 1951 and the 1967 Protocol thereto;
3. *Commends* the Secretariat for having prepared the Model Legislation on the Status and Treatment of Refugees in cooperation with the Office of the UNHCR.
4. *Also commends* the Secretariat for revising the Nairobi Principles of 1989 and for formulating the "Legal Framework for the Establishment of a Safety Zone for Displaced Persons in their Country of Origin".