

ASIAN-AFRICAN LEGAL  
CONSULTATIVE  
COMMITTEE

REPORT  
AND  
SELECTED DOCUMENTS  
OF THE  
THIRTY-FIFTH SESSION  
MANILA, PHILIPPINES  
(4-8 MARCH, 1996)



THE AALCC SECRETARIAT

# **ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

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## Preface

Convention demands that the preface to a publication should reflect upon the literature on the subjects discussed therein and also state precisely what is hoped to attain.

The present volume entitled "Report and Selected Documents of the Thirty-Fifth Session" of the AALCC held at Manila, Philippines from 4 to 8 March 1996 is another contribution to the promotion of international law and an attempt to encourage further dissemination, study and wider appreciation of international law especially during the United Nations Decade of International Law. The Report is not overloaded with either the detailed deliberations of the Session or the studies, but an effort to give a short account of both has been made. The chief aim of the Report is to encourage highlighting critical viewpoints on various topics of contemporary international law included in the agenda of the session, of the member states of the Asian-African Legal Consultative Committee. This Report, like all those that have been published till date deals with most of the subjects that were on the agenda of this particular session.

The Thirty-fifth Session of the AALCC held in Manila, Philippines was attended by Ministers, high level officials from Member States of the AALCC and observer delegations from non-Member States, the United Nations and most of the other international and regional organizations.

The agenda of Manila Session was as given below:

- I. Organizational Matters
  - a. Consideration and Adoption of the Agenda;
  - b. Election of the President and Vice-President;
  - c. Admission of Observers;
  - d. Report of the Secretary-General on Organizational, Administrative and Financial Matters;
  - e. Report on Matters concerning the Relocation of the AALCC Headquarters from New Delhi to Doha;
  - f. Report on the Progress made by the Data Collection Unit;

- g. Report on the Regional Centers for Arbitration;
  - h. Report on the Arabic Unit;
  - i. Venue of the Thirty-sixth Session.
- II. Report of the work of the International Law Commission at its Forty-seventh Session.
- III. Status and Treatment of Refugees:
- a. AALCC's Model Legislation on Refugees;
  - b. Establishment of Safety Zones for the Displaced Persons in their country of origin;
  - c. Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories.
- IV. The Law of the Sea.
- V. The Legal Protection of Migrant Workers.
- VI. The United Nations Conference on Environment and Development: Follow-up
- Framework Convention on Climate Change
  - Convention on Biodiversity
  - United Nations Convention to Combat Desertification in those countries experiencing serious Drought and/or Desertification, particularly in Africa.
- VII. The United Nations Decade of International Law.
- VIII. Proposed Establishment of an International Criminal Court.
- IX. Mutual Co-operation in Judicial Assistance.
- X. Trade Law Matters
- a. Progress Report concerning the Legislative Activities of the UN and other International Organizations in the field of International Trade Law;
  - b. WTO as a Framework Agreement and Code of Conduct for the World Trade.
- XI. Any other Matter.

The papers prepared by the AALCC Secretariat touched upon the respective topics with purely legal perspective, keeping in view the possible permutations of question that they might raise. Most of these papers were taken up for discussion at this Session. Background information, deliberations and the

decisions adopted in regard to some of the following topics have been given in this report.

### 1. Law of the Sea

Following the adoption of the United Nations Convention on the Law of the Sea, 1982 and the establishment of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea (PREPCOM) the Secretariat was mandated inter-alia to monitor the progress of work in the PREPCOM and report to the Committee. With the entry into force, on 16 November 1994, of the United Nations Convention on the Law of the Sea 1982, and the establishment of the International Seabed Authority (ISBA) the Committee at its Doha Session (1995) decided to include in the agenda of its Thirty-fifth Session an item entitled "Implementation of the Law of the sea Convention, 1982". The brief for the Manila Session provided an overview of the Third Part of the First Session of the ISBA held in Kingston, Jamaica, in August 1995.

### 2. Report on the work of the International Law Commission at its Forty-seventh Session

At the Manila Session a report containing the progress of the ILC's Forty-seventh Session was placed for discussion. The Commission had as many as five substantive topics on its Agenda. These included: (i) State Responsibility; (ii) The Draft Code of Crimes against the Peace and Security of Mankind; (iii) International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law; (iv) The Law and Practice relating to Reservations to Treaties; and (v) State Succession and its Impact on the Nationality of Natural and Legal Persons.

The Commission held substantive discussions on all these items. Work on "State Responsibility" and the "Draft Code of Crimes against the Peace and Security of Mankind" is at an advanced stage. The Commission expects to complete the first reading of the draft articles on State Responsibility and the second reading of the draft articles on the Draft Code of Crimes against the Peace and Security of Mankind at its next Session in 1996. The Commission is also expected to complete the first reading of the draft articles on activities that risk causing transboundary harm in 1996. Work on the last two items appears to be at a formative stage. Notes and comments on these items were included in the brief prepared for the Manila Session.

### 3. Proposed Establishment of an International Criminal Court

In view of the importance of the topic for the member States of the AALCC it had earlier been considered on two occasions. The first occasion was a

Seminar convened by the AALCC Secretariat in New Delhi in January 1995 and the second occasion was the annual session held in Doha in April 1995. During the Doha Session, the Head of the Delegation of Sudan had proposed that the AALCC Secretariat organise one or more Seminars on the topic of the ICC.

At the Liaison Officers Meeting held on 7 December 1995, it was agreed to inscribe the item "Proposed Establishment of an International Criminal Court" in the provisional agenda of the Manila Session and to convene a Special Meeting on this topic. Accordingly, the Special Meeting was convened on 5 and 6 March 1996 during the Manila Session. To facilitate deliberations at the Special Meeting, the Secretariat prepared a brief of documents identifying the outstanding issues related to the proposed establishment of an International Criminal Court, which has been included in this report.

#### **4. Status and Treatment of Refugees**

##### **(i) Model Legislation on Refugees**

The draft of a Model Legislation prepared by the Secretariat, in co-operation with the UNHCR Headquarters, was presented at the Doha Session (1995). The text of the Model Legislation was supported by commentaries thereto. The Secretariat had invited comments and observations from the Member Governments. The Report of the Secretary-General on the Model Legislation and the comments/observations received were placed before the Manila Session.

##### **(ii) Establishment of Safety Zones for Displaced Persons in the Country of Origin**

At the Doha Session (1995) the Secretariat submitted the draft of a "Framework for the Establishment of a Safety Zone for Displaced Persons in the Country of Origin." This framework incorporated basic principles enshrined in international humanitarian laws and the decisions of International Organizations. In accordance with a decision taken at the Doha Session, Member Governments had been requested to send their comments and observations on the proposed framework. At Manila Session the Secretariat was directed to study the concept further.

##### **(iii) Deportation of Palestinians in violation of International Law, particularly the 1949 Geneva Convention and the massive Immigration and Settlement of Jews in the Occupied Territories**

At the Manila Session (1996), the Secretariat reported on the progress made on topic over the years and sought further directive. The Secretariat will continue to monitor the developments in the Occupied Territories from the

view point of relevant legal aspects and to consider this item in conjunction with the item on Status and Treatment of Refugees.

#### **5. The United Nations Conference on Environment and Development: Follow-up**

The paper on this topic for the Manila Session focussed on the implementation of Agenda 21 and the follow-up work particularly in respect of the implementation of the Framework Convention on Climate Change and the Biological Diversity Convention.

#### **6. International Trade Law Matters**

##### **(i) Legislative Activities of the United Nations and other Organizations concerned with International Trade Law.**

The Secretariat presented a report on the recent legislative developments in the field of international trade and commerce. The aim of these reports is to keep the Member Governments informed of the recent developments in this area in such organizations as UNCTAD, UNCITRAL, UNIDO, UNIDROIT and the Hague Conference on Private International Law.

##### **(ii) WTO as a Framework Agreement and Code of Conduct for the World Trade.**

As from 1 January 1995, the GATT structure has been replaced by the World Trade Organization (WTO), a new international economic organization. GATT lacked any permanent organizational and institutional structure. The note prepared by the Secretariat outlined the role of the WTO as a framework agreement and code of conduct for the world trade with a view to inviting views of the Member Governments as to what areas needed to be undertaken for study by the AALCC Secretariat.

#### **7. The United Nations Decade of International Law**

This item was inscribed on the agenda of the Beijing Session (1990) and has since been considered at successive sessions of the AALCC.

The brief prepared for the Manila Session includes the report of the AALCC Secretariat forwarded to the office of the Legal Counsel of the United Nations in pursuance of General Assembly Resolution 49/50.

#### **8. Draft Articles on the Extradition of Fugitive Offenders**

The AALCC Secretariat has been working on the question of extradition of fugitive offenders since 1986 with a view to reformulating the Committee's 1961 Principles in the light of recent developments. In view of the increasing importance of this topic, the set of revised draft articles on the Extradition of

Fugitive Offenders was placed before the Manila Session for consideration of further work on the item.

## 9. Legal Protection of Migrant Workers

The item was included in the provisional agenda of the Thirty-fifth Session in response to a reference made by the Government of the Philippines. Reference was made in H.E. President Fidel V. Ramos's inaugural address to the Thirty-fifth Session in which he had referred to the plight of migrant workers and had proposed the establishment of an impartial international or regional tribunal with protection mechanisms and procedures. He also made a reference to the request of some Member States to have a specific legal approach to deal with the issue of migrant workers. So, he invited the delegations to suggest to the AALCC Secretariat specific legal ways in which this topic could be evolved in the coming years. The preliminary study prepared for the Manila Session, sought to outline some of the basic issues concerning migrant workers in the context of Asia and Africa.

It would be no exaggeration to say that the AALCC as a consultative forum has modestly contributed to the development and articulation of an Asian-African jurisprudence in international law. It has not only enriched the corpus of international law but has also ensured that the law or at least certain areas of it have come to truly reflect universal concerns.

As Secretary-General of the AALCC it is not without some pride that I present this Report, hoping it will become a work of long duration.

Before I conclude, I would like to express my warmest thanks to my colleague Mr. Asghar Dastmalchi, the Assistant Secretary-General, under whose able supervision, the last six annual reports (beginning with the combined Report of 1987-91, to the present volume) have been brought out on a modified pattern. His assiduous and valuable contribution in the preparation, editing and compilation of these exhaustive reports has been immense.

New Delhi  
1st November 1996

Tang Chengyuan  
Secretary-General

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## I. Asian-African Legal Consultative Committee

### (i) Introduction

The Asian-African Legal Consultative Committee, an inter-governmental organization, constituted on 15 November 1956 has at present total membership of forty-four states comprising most of the States from Asia and Africa. Originally the Committee were to serve as an advisory body to its member states in the field of International Law and as a forum for Asian-African cooperation in legal matters of common concern but its activities have been broadened from time to time to keep pace with the needs of its member states. Its activities complement the work of the United Nations in several areas. In the light of the Committee's involvement with the work of the United Nations, it has been accorded Permanent Observer status at the United Nations, a distinction it shares with eleven other inter-governmental organizations.

### The Secretariat

The Committee's secretariat is located in New Delhi (India) and its membership is open to Asian and African States which desire to join it in accordance with its Statutes and Statutory Rules. The Committee is headed by an elected Secretary General, assisted by Deputy Secretaries General and Assistant Secretaries General, who are senior officers seconded by Member States. There is other regular staff in professional and administrative categories.

### Cooperation with U.N. and other International Organizations

The Committee has close working relationship with the United Nations, its subsidiary bodies and specialized agencies such as the General Assembly, International Court of Justice, UNCTAD, UNCITRAL, UNHCR, UNEP, UNIDO and the IAEA. The Committee also maintains official relations with the Commonwealth Secretariat, Hague Conference on Private International Law, the UNIDROIT, the Organization of African Unity (OAU), the League of Arab States and other regional and inter-governmental organizations.