

Dr. P.S. Rao, Joint Secretary (L&T) and Legal Adviser to the Ministry of External Affairs, India was unanimously elected as the President of the Thirty-Seventh Session. Mr. Martin A.B.K. Amidu Deputy Minister of Justice and Deputy Attorney General of the Government of Ghana was elected as the Vice-President.

### **Agenda of the Thirty-Seventh Session, New Delhi 13-18 April, 1998**

The Agenda for the New Delhi Session (13-18 April, 1998) was as follows :

#### **I Matters under Article 4(a) of the Statutes : Matters Relating to the International Law Commission**

1. Report on the work of the International Law Commission at its forty-ninth session.

#### **II Matters under Article 4(c) of the Statutes : Matters Referred to the Committee by the Member States**

1. Status and Treatment of Refugees  
(a) Report on the Expert Group meeting to be held in Tehran on 11th and 12th March 1998
2. Deportation of Palestinians in Violation of International Law particularly the fourth Geneva Convention of 1949 and the Massive immigration and Settlement of Jews in Occupied Territories.
3. Legal Protection of Migrant Workers
4. Law of the Sea

5. International Rivers
6. Extra-Territorial Application of National Legislation : Sanctions Imposed Against Third Parties

#### **III Matters under article 4(d) of the Statutes : Matters of Common Concern having Legal Implications**

1. The United Nations Decade of International Law
2. The Establishment of an International Criminal Court
3. The United Nations Conference on the Environment and Development : Follow up

#### **IV Trade Law Matters**

1. Progress Report concerning the Legislative Activities of the United Nations and other International organisations in the Field of International Trade Law
2. Report on the AALCC's Regional Arbitration Centres : Commemoration of the Twentieth Anniversary of the AALCC's Integrated Scheme for the Settlement of Disputes Arising from Economic and Commercial Transactions
3. WTO : Dispute Settlement Mechanism

#### **V Any other Matters :**

Special Meeting on the Reservation to Treaties

## **(ii) AALCC's Representation at the United Nations**

### **(a) Representation at Fifty-second Session of the General Assembly of the United Nations**

The Secretary General Mr. Tang Chengyuan and the AALCC's Permanent Observer in New York, Mr. Bhagwat Singh, represented the AALCC at the 52nd session of the General Assembly of the United Nations. During his stay in New York the Secretary General called on Mr. Kofi Annan, Secretary General of United Nations, Mr. Hans Corell, the United Nations Legal Counsel and other UN Officials. In his meeting with the UN Secretary General the Secretary General of the AALCC expressed his gratitude and appreciation to the United Nations for its continued support to the AALCC's work. Expressing his satisfaction over the good relationship with the United Nations especially with the United Nations Office of Legal Affairs he hoped to do more in promoting cooperation in legal matters in the future. Mr. Kofi Annan praised the contribution of the AALCC in the legal matters and expressed his willingness to consider giving more opportunity to the AALCC to be involved in the United Nations work especially in the Afro-Asian region.

### **(b) Secretary General's Participation at the Sixth Committee Meeting**

The Secretary General addressed the Sixth Committee on 30th October 1997. Since the agenda of the Sixth Committee on that day was on the work of the International Law Commission, he focussed his statement on the close co-operation between the AALCC and the Commission. He also apprised the meeting of the current activities of the AALCC against the backdrop of its Tehran Session.

## **(iii) Meetings/Seminars Organised under the auspices of the AALCC**

### **(a) AALCC's Legal Advisers Meeting held at New York, 29th October, 1997**

A meeting of the AALCC's Legal Advisers was held at the United Nations Headquarters in New York on 29 October 1997. The Meeting was chaired by the then President of the AALCC Dr. M. Javad Zarif, Deputy Foreign Minister for Legal and International Affairs of the Islamic Republic of Iran. Representatives of 15 AALCC Member States namely, China, Cyprus, Democratic People's Republic of Korea, Egypt, India, Islamic Republic of Iran, Japan, Kuwait, Malaysia, Pakistan, Philippines, Republic of Korea, Singapore, Uganda and Tanzania and observers from Australia, Ethiopia and New Zealand participated in the Meeting. In addition, the President of the International Court of Justice, the Chairman of the Sixth Committee, the Chairman of the International Law Commission, the Chairman of the PREPCOM on the Establishment of International Criminal Court and the Chairman of the Working Group on the United Nations Decade of International Law also participated. The AALCC was represented by its Secretary General and the Permanent Observer in New York.

The items on the Agenda of the Meeting included:

- (i) Measures to mark the closure of the United Nations Decade of International Law including the Third International Peace Conference; and
- (ii) Special Meeting on the Reservation to Treaties.

The President in his opening remarks recognised the role of the AALCC in providing a forum for exchange of views on developments in the field of international law. The Secretary General elaborated on the items before the Meeting. The President of the ICJ recalled the contribution of the AALCC in promoting the role of the ICJ. The Chairman of the Sixth Committee

apprised the Meeting of the progress in the Sixth Committee. The Chairman of the ILC drew attention to the work of the ILC particularly on the item "Reservation of Treaties". The Chairman Of the Working Group on Decade of International Law and the Chairman of the PREPCOM on the Establishment of the International Criminal Court gave an account of the work in their respective Working Groups. Statements were also made by the representatives of Australia, China, Cyprus, India, Islamic Republic of Iran and Tanzania.

**(b) Seminar on the Extra-Territorial application of National Legislation : Sanctions Imposed Against Third Parties, held in Tehran, the Islamic Republic of Iran on 24th and 25th January, 1998.**

At the 36<sup>th</sup> Session of the AALCC held in Tehran, the Islamic Republic of Iran, in May 1997, the AALCC, *inter alia*, recognized the significance, complexity and implications of "Extra-Territorial Application of National Legislation:, Sanctions Imposed Against Third Parties" and requested the Secretariat to convene a seminar or a meeting of experts on the subject. Pursuant to that mandate the Secretariat in collaboration with the Government of the Islamic Republic of Iran convened a two-day Seminar in Tehran in January 1998.

Senior Government officials, eminent academics and distinguished international lawyers from 16 Member States of the AALCC, viz.: Bangladesh, China, Cyprus Ghana, India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Pakistan, Sierra Leone, Sudan, Syria, Thailand, Turkey and Yemen and 8 Observer States viz. Australia, Canada, Cuba, France, Guinea, Kyrgyzstan, Mexico and United Kingdom actively participated in the Seminar.

The objective of the seminar, Chaired by Dr. M. Javad Zarif, the Deputy Foreign Minister for Legal and International Affairs of the Government of the Islamic Republic of Iran and the President of the AALCC, was to promote a free and frank exchange of views on the subject.

The Secretariat had prepared a Background Note on the

"Extraterritorial Application of National Legislation : Sanctions imposed against Third Parties". At the request of the participants, this Preliminary Study was circulated as a Seminar Document.

The deliberations at the Seminar focused on a broad range of legal and policy aspects of the subject mainly in relation to two US enactments, namely the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 1996 (commonly referred to as the Helms Burton Act) and Iran and Libya Sanctions Act, 1996 (generally referred to as the Kennedy D'Amato Act) although references were also made to some of the earlier US laws such as the anti-trust legislation, the US regulations concerning Trade with USSR, 1982, and the National Defence Authorisation Act, 1991 i.e. the Missile Technology Control Regime (MTCR Law). The legality of the two 1996 US enactments were examined in terms of their conformity with the peremptory norms of international law; the law relating to counter-measures; the law relating to international sanctions; principles of international law; the law of liability of states for injurious consequences of acts not prohibited by international law; impact of unilateral sanctions on the basic human rights of the people of the target State; and issues of conflicts of laws such as the non-recognition, *forum de non-convenience* and other aspects of extra-territorial enforcement of national laws.

The deliberations touched on a range of State responses to counter the possible impact of the US legislation in particular and unilateral imposition of sanctions through extra territorial application domestic legislation in general. In this regard references were made of the response of the Inter-American Juridical Committee and the European Union. The deliberations revealed a general agreement that the validity of any unilateral imposition of economic sanctions through extra-territorial applications and national legislation must be tested against the accepted norms and principles of international law. The principles discussed included those of sovereignty and territorial integrity, sovereign equality, non-intervention, self-determination, and the freedom of trade. It was generally agreed that the Helms-Burton Act and the Kennedy D'Amato Act in many respects contravened these basic norms. The right to development and the permanent sovereignty over natural resources were specifically mentioned.

There was general Agreement that counter measures could not be a facade for unilateral imposition of sanctions in respect of matters that fell within the purview of Chapter VII of the Charter of the United Nations or the sanctions competence of other international organizations. It was argued that the differences between counter measures and sanctions of the nature of international sanctions should be recognized.

The discussion revealed divergence of Views on three main issues viz. (i) whether the subject should be confined to secondary sanctions through extraterritorial application of national laws; (ii) the distinction between, the prescriptive jurisdiction and the enforcement jurisdiction of every State; and (iii) the applicability of WTO disputes settlement procedure to resolve disputes relating to Helms-Burton Act and the Kennedy D'Amato Act in their extraterritorial application.

### **(c) Expert Group Meeting on the Status and Treatment of Refugees, Held at Tehran, 11-12 March, 1998**

At the invitation of the Government of the Islamic Republic of Iran a meeting of Experts was convened with the, financial and technical assistance of UNHCR at Tehran on 11 and 12 March 1998. To facilitate deliberations at the Expert Group Meeting, two background papers, one by the AALCC Secretariat and the other by the UNHCR were prepared.

The Meeting was attended by 29 Member States, along with officials from the AALCC and the UNHCR Secretariat. The Expert Group Meeting was inaugurated by Dr. M. Javad Zarif. In his inaugural address, he stated that the Bangkok Principles together with its Addenda aptly reflected the humanitarian traditions of Asia and Africa in hosting and protecting refugees.

The Secretary General of AALCC, Mr. Tang Chengyuan, stated that the Experts Group Meeting might consider what form the Manila recommendations would take within the AALCC framework. The conclusions to be reached at this meeting, he observed, would provide the necessary feedback to the AALCC Secretariat in its future work on the subject.

The Representative of the Office of the UNHCR, Ms. Erika Feller in her statement recognized that the Bangkok Principles had served as valuable points of reference for States seeking to develop standards to apply in meeting the refugee challenge. Though these principles remain essentially sound, she underscored the need to include new reference points to achieve full relevance to the problems of the present and flexibility to deal with the problems of the future.

The agenda for the Expert Group Meeting as adopted included four themes: (a) definition of refugees; (b) asylum and standards of treatment; (c) durable solutions; and (d) burden sharing. The meeting held extensive discussions in particular on the agenda item "definition of refugees" in the light of recommendations made at the Manila Seminar. As directed, the Secretariat has prepared a comprehensive summary record of discussions. The 'draft' would be sent to the participants in the Expert Group Meeting with a view to invite their comments. Once these comments were received, the Secretariat is to prepare the final record as well in depth study as recommended by the Expert Group Meeting. A paper containing revised proposals for the Bangkok Declaration has also been included in the brief prepared for the thirty-seventh Session. This has been prepared taking into account the recommendations of the Manila Seminar and the views expressed at the Expert Group Meeting in Tehran.

## **(IV) AALCC's Regional Centres for Arbitration**

### **(a) Kuala Lumpur Regional Centre for Arbitration :**

An Agreement was signed between the Government of Malaysia and the Asian-African Legal Consultative Committee relating to the Kuala Lumpur Regional Centre for Arbitration on 29 February 1996. The Agreement amongst other things, confers certain functional privileges and immunities on the Centre and its officials, as provided in the Malaysian International Organisation (Privileges and Immunities) Act, 1992. In 1997, the Centre undertook a number of inquiries and referrals, wherein it administered or acted as appointing authority in 5 international and 8 domestic cases. The year also witnessed

revision of the Centre's Arbitration Rules. New rules provide for confidentiality of arbitration proceedings and exclusion of the liability for the Centre and Arbitrators from legal proceedings. These revised Arbitration Rules have come into effect on 1 January 1998.

As regards 'Conciliation and Mediation Rules', the same have been revised to be taken as synonymous. Parties desirous can avail these revised Conciliation/Mediation Rules, which incorporate many Provisions on UNCITRAL Conciliation Rules. These Rules too, have taken effect on 1 January 1998.

The Centre has signed 15 co-operation agreements with other Centres for promotion and popularisation of arbitration proceedings. The recent ones include:

- (i) the Sri Lanka Arbitration Centre of the Institute for the Development of Commercial Law and Practice;
- (ii) the Commercial Arbitration Association. Taipei; and
- (iii) the Chartered Institute of Arbitrators, England.

#### **(b) Cairo Regional Centre for International Commercial Arbitration (CRCICA)**

The period under review (1997-1998) witnessed 110 international arbitration cases being handled by the Alexandria branch of CRCICA. Fifty-five per cent of the cases before CRCICA involved foreign parties. The disputes involved construction contracts, import/export matters, supply contracts, management and operation contracts, insurance issues, petroleum investments and spatial emission matters. The year also witnessed the CRCICA concluding a number of cooperation agreements with regional and international institutions these include :

- (i) Cooperation Agreement with the Indian Council of Arbitration

- (ii) effective since January 1997;
- (ii) Cooperation Agreement with Ghana Arbitration Centre, March 1997;
- (iii) Cooperation Agreement with the Association of Arbitrators(South Africa);
- (iv) Cooperation Agreement with Commercial Arbitration Centre, Harare, April 1997;
- (v) Cooperation Agreement with Stufung Netherlands Arbitrage Institute April, 1997;
- (vi) Cooperation agreement with the London Court of International Arbitrators (LCIA), May 1997;
- (vii) Cooperation Agreement with the Cameroon Committee of Arbitration of Douala May 1997; and
- (viii) Cooperation Agreement with WIPO Arbitration and Mediation Centre, October 1997.

Besides, a ninth cooperation agreement is being drafted which may be signed shortly with the Permanent Court of Arbitration, attached with the Chamber of Economy, Slovenia.

The year also witnessed amendments of CRCICA Arbitration Rules by way of adopting institutional services to the changing needs of users. The new Arbitration rules came into effect in January 1998.

#### **(c) Lagos Regional Centre for International Commercial Arbitration**

The Lagos Centre is presently located at Ikoyi, Lagos. As the seat of the Government has shifted to Abuja the permanent location of the Centre is being considered by the Federal Ministry of Justice. In April 1997, the Centre organised a five day National Workshop on International Arbitration and AOR, organised jointly with the Centre for African Law and Development Studies. The Arbitration and Conciliation Law, 1988, which is based on the UNCITRAL Model Law on International Commercial Arbitration, Provides favourable legal framework for settlement of arbitral dispute.