

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or international organization.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se

3. When a State or an international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the reserving State or organization and the objecting State or organization to the extent of the reservation.

Article 22

Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

Article 23

procedure regarding reservations

1. A reservation, an express acceptance of a reservation and, an objection to a reservation must be formulated in writing and communicated to the contracting State and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

ANNEXURE VII

TEXT OF THE PRELIMINARY CONCLUSIONS OF THE INTERNATIONAL LAW COMMISSION ON RESERVATIONS TO NORMATIVE MULTILATERAL TREATIES INCLUDING HUMAN RIGHTS TREATIES.¹

The International Law Commission has considered, at its forty-ninth session, the question of the unity or diversity of the juridical regime for reservations. The Commission is aware of the discussion currently taking place in other forums on the subject of reservations to normative multilateral treaties, and particularly treaties concerning human rights, and wishes -to contribute to this discussion in the framework of the consideration of the subject of reservations to treaties that has been before it since 1993 by drawing the following conclusions:

1. The Commission reiterates its view that articles 19 to 23 of the Vienna Conventions on the Law of Treaties of 1969 and 1986 govern the regime of reservations to treaties and that, in particular, the object and purpose of the Treaty is the most important of the criteria for determining the admissibility of reservations;

2. The Commission considers that, because of its flexibility, this regime is suited to the requirements of all treaties, of whatever object or nature, and achieves a satisfactory balance between the objectives of preservation of the integrity of the text of the treaty and universality of participation in the treaty;

3. The Commission considers that these objectives apply equally in the case of reservations to normative multilateral treaties, including treaties in the area of human rights and that, consequently, the general rules enunciated in the above-mentioned Vienna Conventions govern reservations to such instruments;

¹ Reproduced from the *Report of The International Law Commission on the work of its forty-ninth session 12May-7&July1997 A/52/10*. p. 125

4. The Commission nevertheless considers that the establishment of monitoring bodies by many human rights treaties gave rise to legal questions that were not envisaged at the time of the drafting of those treaties, connected with appreciation of the admissibility of reservations formulated by States;

5. The Commission also considers that where these treaties are silent on the subject, the monitoring bodies established thereby are competent to, comment upon and express recommendations with regard, inter alia, to the admissibility of reservations by States, in order to carry out the functions assigned to them; reservation so as to eliminate the inadmissibility, or withdrawing its reservation or foregoing becoming a party to the treaty;

6. The Commission stresses that this competence of the monitoring bodies does not exclude or otherwise affect the traditional modalities of control by the contracting parties, on the one hand, in accordance with the above-mentioned provisions of the Vienna Conventions of 1969 and 1986 and, where appropriate by the organs for settling any dispute that may arise concerning the implementation of the treaties;

7. The Commission suggests providing specific clauses in normative multilateral treaties, including in particular human rights treaties, or elaborating protocols to existing treaties if States seek to confer competence on the monitoring body to appreciate or determine the admissibility of a reservation;

8. The Commission notes that the legal force of the findings made by monitoring bodies in the exercise of their power to deal with reservations cannot exceed that resulting from the powers given to them for the performance of their general monitoring role;

9. The Commission calls upon States to cooperate with monitoring bodies and give due consideration to any recommendations that they may make or to comply with their determination if such bodies were to be granted competence to that effect;

10. The Commission notes also that, in the event of inadmissibility

of a reservation, it is the reserving State that has the responsibility of taking action. This action may consist, for example, in the State either modifying its

11. The Commission expresses the hope that the above conclusions will help to clarify the reservations regime applicable to normative multilateral treaties, particularly in the area of human rights;

12. The Commission emphasizes that the principles enunciated above are without prejudice to the practices and rules developed by monitoring bodies within regional contexts.

VIII. STATUS AND TREATMENT OF REFUGEES

(i) Introduction

The Subject 'Status and Treatment of Refugees' has been on the agenda of the Asian African Legal Consultative Committee (AALCC) since its sixth session held at Cairo in 1964. At its eighth session (Bangkok), the AALCC adopted a set of Principles Concerning the Status and Treatment of Refugees, 1966 (commonly referred to as the 'Bangkok Principles'). Subsequently in 1970 and 1987, the Committee adopted two addenda on the right of refugees to return and the norm of burden-sharing respectively. The work of the AALCC in these areas has been carried out in consultation and active support of the Office of the United Nations High Commissioner for Refugees (UNHCR).

At the Thirty-fifth Session of the AALCC held in Manila (1996), the UNHCR Representative, recalled that the year 1996 marked the 30th anniversary of the adoption of the Bangkok Principles and felt that, the commemoration of this occasion would afford a good opportunity for the AALCC Member States to take stock of the experience acquired during these thirty years. In this context, she expressed the willingness of UNHCR to co-sponsor with the AALCC a seminar or colloquium on refugee law whose point of departure will be a review of the Bangkok Principles. At the conclusion of its deliberations, the Committee took note of this proposal and requested the AALCC Secretariat, "to organize in collaboration with the financial and technical assistance of the UNHCR a seminar in 1996, on the Status and Treatment of Refugees to commemorate the 30th Anniversary of the Principles of Refugees adopted by the AALCC at its 8th Session in Bangkok in 1966.

In pursuance of that decision, a Preparatory Meeting of the AALCC Member States was held in New Delhi in September 1996 to consider the agenda and other matters concerning the Commemorative Seminar. The Preparatory Meeting proposed that the Seminar should be held from 11 to 13 December 1996 at Manila, Philippines. The aim of the commemorative event should be (a) the promotion of the knowledge of these principles, and (b) their

re-examination in the light of developments in law and practice in the Afro-Asian region since 1966, with a view to recommending further action. The four subjects identified for focussed consideration at the Manila Seminar included" (i) the definition of refugees, (ii) asylum and standards of treatment, (iii) durable solutions, and (iv) burden-sharing.

COMMEMORATIVE SEMINAR AT MANILA 1996

The Commemorative Seminar, held at Manila, from 11 to 13 December 1996, was attended by representatives of 26 Member States,¹ 2 Observer States² officials of the AALCC Secretariat and the Office of UNHCR. The AALCC-UNHCR Joint Secretariat had prepared four background papers on the four subjects identified at the Preparatory Meeting, which served as the basis for discussions at the Seminar. The Seminar was inaugurated by Mr. Teofisto Guingona, Secretary of Justice, Government of Philippines, and the then President of the AALCC.

In his address, the President recalled that the Bangkok Principles were adopted at a time when the law of refugees was in its nascent stage, and proposed that the Bangkok Principles be reviewed and revised in the light of numerous international instruments dealing with refugees, as well as State practices, which were evolved thereon during the last 30 years. Four Working Groups were constituted to consider the four issues identified viz. definition of refugees, asylum and standards of treatment, durable solution and burden sharing. The working groups met in parallel sessions, and the deliberations were guided by the Moderators. The Working Groups adopted reports on their respective subjects, which were then presented to the Plenary Session. The recommendations as adopted at the Plenary Session marked general consensus on some issues including some textual changes in the text of Bangkok Principles. On some other issues, there was no convergence of the views.

¹ Arab Republic of Egypt, Bangladesh, Botswana, China, Cyprus, India, Indonesia, Iran, Iraq, Japan, Republic of Korea, Malaysia, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Senegal, Singapore, Sri Lanka, Thailand, Turkey, Uganda and the United Arab Emirates.

² Canada and Holy See

Thirty-sixth Session of the AALCC, Tehran, (1997)

At The thirty-sixth session of the Committee held in Tehran in May 1997, the AALCC Secretariat presented a report entitled "Report of the Seminar to Commemorate the 30th Anniversary of the Bangkok Principles held in Manila, Philippines", which set forth a summary of the proceedings at Manila; the text of the background notes prepared for the deliberations and the recommendations of the Manila Seminar.

During the deliberations at the Tehran Session, the delegates welcomed the recommendations of the Manila Seminar. While reiterating the importance of the Bangkok Principles, they called for focussed efforts towards addressing certain specific issues. Some delegates were of the view that a restatement of the Bangkok Principles might start with a review of the refugee definition in a manner as to be in conformity with the current developments and other international instruments on this subject. While some delegates recognized the need to encourage regional and subregional co-operation in resolving refugee problems, others were of the view that where the magnitude of the refugee crisis was too complex and burdensome to be addressed within regional contexts, the burden should be shared by all members of the international community. In this context, the relevance of the concepts of international solidarity and burden-sharing should be applied to all aspects of the refugee problem in order to help the refugee-receiving States. The need for further reflection on the responsibility of States in solving the refugee problem was also emphasized. More particularly, the responsibility of the refugee-producing countries to pay compensation for refugees was mentioned as a key element in this regard.

Recalling the useful work accomplished at the Doha Session on the legal framework on the establishment of safety zones, a suggestion was made that the concept of safety zones for displaced persons in the country of origin could be re-examined by the Committee.

Following the proposal of the Representative of UNHCR suggesting the establishment of a Working Group to study the matter the Committee, in

its resolution on the subject³ acknowledged the importance of the recommendations adopted at the Manila Seminar and requested the Secretary General to convene as appropriate, a meeting of experts in order to conduct an in-depth study of the issue, in light of the recommendations of the Manila Seminar as well as the comments thereon at this session and report to the thirty-seventh session.”

Thirty Seventh Session : Discussion

The Deputy Secretary General, Mr. Ryo Takagi while Introducing the item Status and Treatment of Refugees stated that the 36th Committee had considered the recommendations of the AALCC-UNHCR Seminar to commemorate the 30th Anniversary of the Bangkok Principles, held at Manila in December 1996. Following its deliberations, the Committee had mandated the Secretary General to “convene a meeting of experts in order to conduct an in-depth study of the issue, in light of the recommendations of the Manila Seminar, as well as the comments thereon at the current session and report to the Thirty-seventh Session.” In fulfilment of this mandate, a two-day Expert Group Meeting was convened at Tehran, on the invitation of the Government of the Islamic Republic of Iran.

He thanked the Government of the Islamic Republic of Iran for hosting the Expert Group meeting. He also thanked the Government of Japan and the Office of the United Nations High Commissioner for Refugees for the financial and technical assistance towards the successful conduct of this initiative.

The Expert Group meeting was attended by 29 Member States. The meeting discussed four broad themes: (i) definition of refugees; (ii) asylum and standards of treatment; (iii) durable solutions; and (iv) burden-sharing. The deliberations reviewed the Manila recommendations and focussed on specific issues, with a view to carrying forward the process started at Manila.

³ Resolution No. 36/3. For full text see Report of Thirty -Sixth Session held in Tehran (3-7 May 1997) pp.67-68

He briefly stated the outcome of the Expert Group Meeting as follows: “As regards the refugee definition there was consensus that the updating and expanding of the refugee definitions on the basis of broader humanitarian considerations would more appropriately reflect the nature of present day refugee movements. It was agreed that any revision of the refugee definition should reflect the characteristics of forced displacement experienced in the region of AALCC Member States.”

As regards the topic, “Asylum and Treatment of Refugees” the meeting reviewed the recommendations of the Manila Seminar and suggested specific textual changes to the Bangkok Principles. Special attention was also drawn to the particular needs of vulnerable refugees such as women, children and the elderly.

On the topic “durable solutions”, the meeting reiterated the Manila recommendations on ‘voluntary repatriation’ being the preferred solution to the refugee problem. The role of ‘comprehensive approaches’ towards effective solutions for return of refugees was also acknowledged. The responsibility of the country of origin to allow safe and dignified return of refugees and affording ways and means for their long term and sustainable reintegration was also highlighted.

The Deputy Secretary General also stated that on the subject of ‘burden sharing’, the meeting reaffirmed the Manila Seminar recommendations on integrating the descriptions of burden-sharing as contained in the AALCC’s second Addendum to the 1966 Bangkok Principles. While recognizing the need to tackle the root causes giving rise to forcible displacement, the meeting recognised that the primary responsibility for refugee protection must rest on the states of asylum.

The Expert Meeting asked the AALCC Secretariat to prepare an in-depth study of the refugee issue in the region and to formulate a draft of proposals for the Bangkok Principles to reflect the contemporary regional characteristics as expressed in the recommendations of the Manila Seminar and the Tehran Meeting of Experts.

The Deputy Secretary General also said that the Secretariat undertook this work on the basis of the deliberations of the Session, and had submitted a set of proposals for a revised version of the Bangkok Principles, incorporating the recommendations of the Manila Seminar and of the Tehran Meeting. The report of the Rapporteur and the summary proceedings of the Tehran Meeting had also been presented in the Secretariat brief. The Committee considered these proposals and gave guidelines to enable the AALCC Secretariat to undertake further work on the subject.

(ii) Decision On "The Status and Treatment of Refugees"

(Adopted on 18.4.98)

The Asian African Legal Consultative Committee and its Thirty Seventh Session

Having considered the item Status and Treatment of Refugees and the Secretariat Document No AALCC\XXXVII\New Delhi\98\S4

Recalling the Secretariat report entitled "Report of the Seminar to Commemorate the 30th Anniversary of the Bangkok Principles held in Manila, the Philippines", submitted to the 36th Session;

Recalling also the Resolution adopted by the 36th Session which, after taking note of the said Report, requested the Secretariat to convene a Meeting of Experts in order to conduct an in-depth study of the issues covered by the Report, in light of the recommendations of the Manila Seminar and the comments thereon made at the 36th Session, and to report to the 37th Session;

Having considered also the report of the Secretary-General on the Tehran Meeting of Experts together with its attachment which contains a consolidation of proposals made to revise the 1966 Principles concerning Treatment of Refugees, known as the "Bangkok Principles", this consolidation having been prepared by the Secretariat at the request of the Meeting of Experts to reflect the recommendations of the Manila Seminar as well as those of the Meeting of Experts;

1. **Expresses** appreciation to the Secretariat for convening the Meeting of Experts, to the Office of the United Nations High Commissioner for Refugees for providing technical and material support to the Meeting of Experts, to the Government of the Islamic Republic of Iran for hosting it, and to the Government of Japan for providing the necessary Financial support,

2. **Takes note** with interest the report of the Secretary General and of the consolidated text of proposed revisions to the Bangkok Principles prepared by the Secretariat:

3. **Requests the Secretary General** to undertake consultations with Member States and with the Office of the United Nations High Commissioner for Refugees in particular on the consolidated text, with a view to submitting to the 38th Session recommendations on the revisions to the Bangkok Principles.

(iii) Secretariat Study : Status And Treatment of Refugees

Expert Group Meeting Held At Tehran, The Islamic Republic Of Iran 11-12 March, 1998

In partial fulfilment of the mandate and 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 from 11 to 12 March 1998. Towards facilitating further deliberations at the expert meeting, two background papers, one each by the AALCC Secretariat and the UNHCR were prepared.

The Meeting was attended by 29 Member States besides officials from the AALCC and UNHCR Secretariat and was inaugurated by Dr. M. Javad Zarif, Deputy Minister of Foreign Affairs for Legal and International Affairs and President for the Thirty-Sixth Session of the AALCC. 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 Expert Group Meeting might consider what form the Manila recommendations would take within the AALCC framework. The conclusions reached at this meeting would provide the necessary feedback for the AALCC Secretariat in its future work on the subject.

The representative of the Office of UNHCR, Ms. Erika Feller in her statement recognized that the Bangkok Principles have 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 meeting as adopted included four themes: (a) definition of refugees, (b) asylum and standards of treatment, (c) durable