

which the peace process was based need to be strongly condemned. These decisions are a violation of international law and are a threat to the peace process and could plunge the region once again into struggle, tension and instability. Furthermore, this systematic violation of the "Peace process" compelled the international community to take some decisive decisions on how to bring back peace to the region.

The General Assembly during its 52<sup>nd</sup> Session, in its resolutions 52/66 and 52/67 has expressed grave concern about the decision of the Government of Israel to resume settlement activities, including the construction of the new settlement in Jabal Abu Ghneim, in violation of international humanitarian law, relevant United Nations resolutions and agreements reached between the parties, as well as, about the dangerous situation resulting from actions taken by the illegal armed Israeli settlers in the occupied territory, as illustrated by the massacre of Palestinian worshippers by an illegal Israeli settler in Al-Khalil.

The continuing violation of the human rights of the Palestinian people by Israel was a cause of concern, especially the use of collective punishment, closure of areas, annexation and establishment of settlements and the continuing actions by Israel designed to change the legal status, geographical nature and demographic composition of the occupied Palestinian territory, including Jerusalem.

He felt that due to the fast deteriorating situation there is an urgent need to reach a final settlement on the question of Palestine that will allow Palestinian people to attain their legitimate rights, in keeping with international law and with the fundamental principles established at the Madrid and Oslo Conferences and subsequent Agreements which ensure security and stability for all in the region.

The Representative of the Office of United Nations High Commissioner for Refugees (Ms. Irene Khan) conveyed the wishes of Mrs. Sadaka Ogata, the United Nations High Commissioner for Refugees for the success of the 37<sup>th</sup> Session of the AALCC. Recalling the close relationship that has endured for the past four decades between AALCC and UNHCR,

she said that the process that started at New Delhi in September 1996 towards the updating of the Bangkok Principles was indicative of the keen and abiding interest of AALCC Member States in solving refugee problems. She cited the recent efforts of UNHCR to address refugee issues at regional level, more particularly in CIS countries and South West Asia. The association of AALCC and UNHCR in the updating of the Bangkok Principles, she felt, could ensure uniformity, consistency and predictability on the protection of refugees in the Asian-African region. Acknowledging the need for further reflection on the Manila Seminar and Tehran expert group recommendations, she hoped that the AALCC would endorse the recommendation for continued consultations between AALCC and UNHCR, on updating the Bangkok Principles. She also expressed the willingness of UNHCR to support this process.

The Delegate of Palestine appreciated the work undertaken within the Committee since 1964 on the subject of refugees. In the light of the special problems faced by Palestinian refugees, he called for a reformulation of Article IV paragraph 4 of the proposed revised version of Bangkok Principles submitted by the Secretariat, to include the rights of dependents and a wider scope for the term 'dependents'. Inviting attention to Article X of the Secretariat proposals, he underscored the financial constraints that hindered UNHCR assistance to Palestinian refugees, and appealed to AALCC Member States to help UNHCR financially with a view to ensuring effective protection and assistance for the Palestinian refugees.

Turning to the aspect of Deportation of Palestinians, he appreciated the work undertaken by the Secretariat on this subject of vital importance. He stated that even after fifty years of suffering just and durable peace evaded the people of Palestine.

Even though the Palestinian Liberation Organization adopted all diplomatic ways and means on the path of peace, justice and rightness, the beam of light which appeared after the conclusion of the Madrid and Oslo Agreements had vanished due to the policies adopted by the Israeli Government. The policies adopted by the Israelis were in contravention of established principles of international law. Instead, Israel was attempting to place new principles and rules which in effect nullifies all agreements and the 'land for

peace' formula. The practice of these new policies not only was the cause of immense suffering for the Palestinian people but against the international community as a whole which rejected these practices.

The AALCC in his view provided a forum for exchange of views on this topic and could provide a united stance of justice and condemnation of violence perpetuated against the Palestinians. He suggested that the AALCC continue to monitor the developments to include all Israeli practices in violation of international law. He also drew attention to the General Assembly Resolutions adopted during the 52<sup>nd</sup> Session which had called for the convening of a Conference of the Contracting Parties to see how the four Geneva Conventions could be applied to the Palestinian problem.

The Delegate of the Islamic Republic of Iran was of the view that refugee problems in the present context warranted new approaches and devising innovative institutional structures for confronting the evolving dynamics of refugee movements. Though the Bangkok Principles have served as valuable points of reference for States seeking to develop standards in meeting the refugee challenge. He highlighted the need to identify new reference points to achieve full relevance of the present problems and the flexibility to tackle future problems. In this connection, he welcomed the recommendations of the Manila Seminar and the Expert Group meeting at Tehran. His delegation was of the view that 'international protection' and 'burden sharing' were two pillars of international solidarity. On durable solutions, he acknowledged that 'voluntary repatriation' was a right of the refugee, and emphasized the importance of strengthening and promoting ways and means to facilitate voluntary, safe and dignified return of refugees. On the item "Deportation of Palestinians in violation of International Law" he recalled that the item was taken up by the Committee at its Singapore Session (1 988) upon the proposal of the Iranian Delegation. He said it was unfortunate that Palestinian people still continued to suffer and supported the proposal to continue to keep the item on the agenda of the AALCC.

The Delegate of Pakistan drew attention to the fact that most of the world's refugee population was hosted in third world developing countries of Asia and Africa. In this context, he emphasized the need for 'equitable burden sharing' to ensure the high international standards of refugee treatment. Hence

more focussed attention on 'burden-sharing' within the Bangkok Principles, framework was urged.

On the item "Deportation of Palestinians in Violation of International Law" he stated, that his country had, always considered that Deportation of Palestinians and establishment of Jewish Settlements in Palestine, were violative of the Hague Convention of 1907, the Fourth Geneva Convention of 1949 and 1977 Protocols. He also condemned these and other acts that are in violation of international law, UN Resolutions and international agreements that denied the Palestinians their rights, including the right of self-determination. He supported the retention of this item on the agenda of the Committee.

The Delegate of Tanzania pointed out that certain types of refugee situations are thrust on some states, by incidents that are not within the control of such states. He cited the examples of refugees fleeing civil wars, wars of external aggression, natural calamities such as drought, famine and floods. He detailed the commitment and practice in Tanzania, where the intricacies of refugee definition did not pose any problem in the according of protection to refugees from neighbouring countries. He also appreciated the conduct of refugees in Tanzania, who had never claimed any privileged status but readily integrated with the local community. However, he pointed out that the scarce resources available was becoming a problem in according recognised international standards of treatment for refugees. He stressed the need to develop inward looking approaches in determination of refugee status and tackling mass exodus of refugees. Drawing a distinction between the refugee policies in Europe and other developed countries, he said that the Asian-African countries should develop responses to suit their special requirements. In this connection, he called for elaborating on the concept of burden-sharing. Possibly, the payment of compensation to the refugee victims could be explored. This can be developed by imposing an obligation on the country of origin that, wherever possible, it should share with the country of refugee the burden of its nationals who are in refuge. He stated that the amount of contribution would depend on the degree of fault on the part of the country of origin and the extent of its stability

The Delegate of Ghana reiterating the importance of durable solutions

to refugee problems, expressed the view that States should create conducive conditions in their territory to prevent any refugee outflows and enable return of refugees in conditions of safety and dignity. Taking note of the views expressed at the Tehran Expert Group meeting he appreciated the work done within AALCC on the theme of "burden sharing" which in his view, required more attention in any updating or revision of the Bangkok Principles. Recalling the directives of the Tehran meeting he called upon the Secretariat to undertake an indepth study of the issues concerning the updating of Bangkok Principles and make a report to the next session. He requested the Secretariat to continue to monitor the situations in Palestine and to submit a report to the next Session of the Committee.

The Delegate from Syria highlighted the need to solve the Palestinian issue. Expressing hope that there would be a just and lasting solution to the Palestinian issue, he condemned Israel for disrupting the peace process. In this regard he mentioned the mandate of General Assembly Resolutions 242, 328 and 425 which had called for complete withdrawal of Jews from all Palestinian territories. The non compliance of these resolutions, showed disrespect and violation of established international law. The deportation of Palestinians and resettlement of Jews in his governments view, tantamount to violation of all international legal instruments applicable to the region. He warned that the situation had international complications and West Asia should be able to live as a zone of peace. He supported the view that the topic be placed on the agenda of the 38<sup>th</sup> Session of the AALCC.

The Delegate of Egypt reiterated the importance of the item for the Committee and supported the suggestion of the Representative of Palestine and the Delegate of Syria, that the Secretariat continue to monitor different dimensions of the matter and expand the scope of examination of the study.

On the item of "Status and Treatment of Refugees, he expressed his appreciation to the AALCC, UNHCR and the Government of the Islamic Republic of Iran, for convening an Expert Group Meeting on Status and Treatment of Refugees. He characterized the Meeting as a good starting point for concretising the unified aspirations of the Asian-African States towards

the issues of resolution of refugee problem. Welcoming the proposed changes to the definition of refugees, he stressed the need to distinguish between genuine refugees and terrorists. The updating of the Bangkok Principles should exclude persons alleged to have committed heinous crimes. In this regard, he called for a clear definition of the term 'political crimes'. Drawing attention to the UN Declaration on Suppression of International Terrorism, 1996 and Article 11 of the UN Convention on Suppression of Terrorist Bombing 1997, which deals with political crimes, he suggested that an analogous provision could be incorporated in the revised Bangkok Principles. His delegation concurred with the view expressed by many delegates that developing countries experienced special difficulties, in complying with the higher standards of treatment provided for in the 1951 Convention. In this context, he endorsed the need for further elaboration of the concept of burden sharing. Furthermore, he reiterated his country's understanding that voluntary repatriation was the ideal solution for the Asian-African region. Expressing his appreciation towards the Secretariat for the preparation of a comprehensive summary of the Tehran proceedings, he enquired whether the Egyptian proposal submitted at the Expert Group Meeting on 'definition of refugees' found place in the Report produced by the Secretariat.

The Deputy Secretary General, Dr. W. Z. Kamil clarified that the proposal has been reflected in the Secretariat document. And -the Secretariat is presently studying the proposal and would report on the same to the 38<sup>th</sup> Session.

The Delegate of India outlined the liberal traditions of Asian-African countries in receiving and treating huge refugee populations. Citing the example of India, he stated that a consistent and voluntary protection extended by his country, is well acclaimed and met the best known international standards in this regard. He affirmed his country's stand that a universally recognized basis for determining the status of refugees is the well founded 'fear of persecution' and the importance of the principle of non-refoulement. Both these aspects, in his view, were adequately reflected in the Bangkok Principles. While appreciating the work of the AALCC in the review of Bangkok Principles, it was his view that the review process should consider the, direction taken by international refugee law, in particular and human rights law in general. The

process should also take into consideration the difficulties of States which includes scarcity of resources, socioeconomic problems and the security dimension arising out of mass influx of refugees.

In his delegation's view the inclusion of elements drawn from human rights law and humanitarian law, in the definition of refugees, would lead to duplication and congestion of provisions, besides distorting the desired orientation. It was his belief that the definition of refugees was inter-linked with the other three issues discussed at the Manila and Tehran meetings. More particularly, speaking on the relationship between the 'refugee definition' and 'burden sharing', he stated that a view had been expressed at the Tehran meeting that, "international burden-sharing would not be available from States which have accepted the conventional definition of refugees to States which have accepted the enlarged definition of refugees, because the perception of refugees is different for those States. He called for a deeper consideration of this point. It was his government's position that voluntary repatriation is the most preferred solution for refugee problems in the Asian-African region.

The Delegate of Uganda elaborating on the traumatic conditions of existence which refugees experienced in the countries of refuge, called for a new orientation in assisting and protecting refugee populations. He was of the view that the responsibility of solving refugee problems should shift from the international community to the refugee producing countries. These countries, in his opinion, had an obligation towards their citizens and the international community to maintain and sustain conditions which are conducive to peace and stability within their territory. He urged that the Secretariat continue studying the topic of refugees and include in its work a study on the responsibilities of refugee producing States.

Turning to the subject "Deportation of Palestinians in Violation of International Law" he observed that his Government had supported the rights of Palestinians in every fora wherever discussed. He urged the Secretariat to continue to monitor the plight of the Palestinian people and prepare an appropriate brief for the next session.

The Representative from the Organisation of Islamic Conference (OIC) lauded the efforts of the Deputy Secretary General for presenting an excellent background document on Deportation of Palestinians. Recalling that countries are celebrating the fiftieth anniversary of the Universal Declaration of Human Rights 1948, he bemoaned the fact that Palestinians are still suffering without a homeland. The Middle East Peace process in his view had reached a deadlock, as Israel refused to implement General Assembly resolutions calling for complete withdrawal from Palestinian lands. In this regard, he called for immediate cessation of hostilities, killing of women and children and freeing of over 5000 prisoners, held by Israel. He appealed to the AALCC and the international community to force Israel to implement General Assembly resolutions to ensure just and lasting peace in the Middle Eastern region.

The Representative of UNHCR (Mr. Fontaine) in his intervention sought to clarify on some issues raised by the delegates. Regarding the comments on terrorism by the delegate of Egypt, he said UNHCR shared his concern about the need to combat terrorism and to prevent the abuse of the asylum process to shield terrorists. However, as indicated at the Tehran meeting UNHCR was also concerned that including a specific reference to terrorism in the exclusion clauses might encourage people to equate refugees with terrorists, thereby undermining the protection regime. It is better to deal with that in international instruments specifically addressing the terrorism issue, not in the refugee definition of the Bangkok Principles. Indeed, the exclusion clauses of the refugee definition are already quite adequate and if applied properly, they will exclude a terrorist. Proper application of the inclusion clauses is what is needed.

Referring to the statement by the Delegate of India on the capacity to host refugees, he stated that the objective of refugee law is to identify who needs international protection and under what conditions it should be given, when and by whom. The capacity to host is a practical issue which is quite satisfactorily dealt with under burden sharing, not under the refugee definition.

In connection with the views of the Indian Delegate as to the danger of duplication between refugee law and humanitarian and human rights law, he stated that the principles at issue here are already part of refugee law. It was

therefore simply a question of updating the Bangkok Principles by including them therein.

On the reference to burden sharing made by the Delegate of India, he pointed out that the Tehran Meeting of Experts had strongly endorsed the recommendations of the Manila Seminar to incorporate into the Bangkok Principles - the substantive paragraphs of the second Addendum to the Bangkok Principles - UNHCR supports this, as this Addendum presents a good set of provisions to update the Bangkok Principles.

As regards, the proposal by the delegate of Uganda, that responsibility should be shifted from the international community as a whole to the country of origin, he said that UNHCR fully supports expanding responsibility from the country of asylum to include the country of origin. This is precisely what has been happening in the last decade or so and that countries in the Asian-African region have given the example in this respect. In this connection he drew attention to the Comprehensive Plan of Action (CPA) on Indo-Chinese Refugees which put great emphasis on the responsibilities of the country of origin. Under the CPA, the countries of origin fully co-operated with the international community not only in receiving their citizens in dignity and safety, but also in participating in drawing up the rules and regulations relating to the whole undertaking.

The Delegate of Egypt, While responding to the intervention by the representative of UNHCR, stated that the implication of his delegation's statement was not to find fault with the 1951 Convention but to highlight the discrepancies that have crept in while administering the 1951 Convention's exclusion clause to concrete cases within the domestic legal systems. It was the understanding of his delegation that the effect of the 1997 UN Convention on the Suppression of Terrorist Bombings was to address the issue at the following two levels: firstly, it prohibits the granting of asylum to a person alleged of committing a crime and secondly, where asylum was granted to a person, steps need to be taken to monitor that he does not abuse the right of asylum by indulging in criminal activities.

The Vice-President, while closing the deliberations on the two items

made the following observations. As regards, the item "Status and Treatment of Refugees", he said the deliberation at this session seemed to indicate a broad agreement on the need to review the Bangkok Principles. More specifically, he stressed on the importance of 'burden-sharing' in addressing refugee problems in the Asian African region. He stated that the Secretariat should in furtherance of the Tehran recommendations, carry out an indepth study on the proposed changes and present a working paper for consideration of the thirty-eighth session of AALCC.

On the item "Deportation of Palestinians" he recalled that the fact that the item had been on the agenda of the committee for a decade was reflective of the unfortunate conditions in which the Palestinian people had to exist. He said that the item should be retained on the agenda of the AALCC for consideration at its 38<sup>th</sup> Session. He reflected in his summary the views of most of the Delegations that the monitoring made by the Secretariat should be widened and sought the views of the delegates about modifying the item to read: "Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International law Particularly the Fourth Geneva Convention of 1949". When he did not notice or register any objection from the Assembly he announced its acceptance for the new scope of monitoring assigned to the AALCC Secretariat.

**(ii) Decision on the "The 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"**

(Adopted on 18.4.98)

**The Asian African Legal Consultative Committee at its thirty-seventh session**

**Having** considered Doc. No. AALCC/XXXVII/New Delhi/98/S9;

**Having heard** the comprehensive statement of the Deputy Secretary General;

**Having also heard** with great concern the comprehensive statement of the Head of Delegation of Palestine and other related statements;

**Following with interest** and hope the peace efforts being exerted for the achievement of a just and comprehensive solution of the question of Palestine on the basis of Security Council resolutions 242 (1967), 338 (1973) and 425 (1978) and the formula of "land for peace" and the legitimate rights of the Palestinian people;

**Mindful** of the difficulties being faced in the implementation of the peace process;

**Taking cognizance** of the hardships suffered by the Palestinian people;

1. Expresses the hope that a just and durable solution will allow Palestinian people to attain their legitimate rights;
2. Directs the Secretariat to enlarge the scope of monitoring the developments in the occupied territories from the view point of relevant legal aspects; and

3. Decides to Place the item "Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949" on the agenda of the Thirty eighth session.