



**ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE: REPORT OF THE ELEVENTH SESSION, ACCRA (GHANA) 1970.** The Secretariat of the Committee, New Delhi (India). Pp. iii+377.

**THE REPORT** of the Eleventh Session of the Asian-African Legal Consultative Committee held in Accra (Ghana) from 19th to 29th January 1970 is devoted to a consideration of the subjects of "The Rights of Refugees," "The Law of International Rivers", "The Law Relating to International Sale of Goods" and "International Legislation on Shipping" which are all of vital individual, regional and global interest to the Asian-African states. While the first subject was originally referred to the Asian-African Legal Consultative Committee (hereinafter called the committee) for its consideration by the Government of the United Arab Republic as early as 1964, the second was included in the programme of work of the committee on a reference made by the Governments of Iraq and Pakistan in 1966. The third subject, on which the Asian-African perspective is urgently needed in view of certain developments in the field, was included in the programme at the suggestion of the Government of India while the fourth was taken up for preliminary discussion at the eleventh session. The views of the committee on the above subjects will, no doubt, receive world-wide attention and contribute to some extent to the progressive development of international law.

The committee adopted on 27th January 1970 an "Addendum to the Principles concerning Treatment of Refugees"<sup>1</sup> the operative part of which provides for the right of return of a person displaced from his habitual place of residence due to foreign domination, external aggression or occupation (paragraph 1), states the duty of the government or authorities in control of such place of habitual residence to facilitate by all means at their disposal the return of all such persons (paragraph 2), extends the right of return as also the protection mentioned in paragraph 2 to the dependents of the persons referred to in paragraph 1 (paragraph 3), states that when such person does not desire to return he shall be entitled to prompt and full compensation as determined, in the absence of agreement between the parties concerned, by an international body designated or constituted by the Secretary-General of the United Nations at the request of either party (paragraph 4) and further provides for the determination of disputes with regard to the status of such a person or "any other dispute" by an international body designated or constituted as in paragraph 4 (paragraph 5). The delegates of India and Ghana expressed reservations with regard

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1. For the text of the addendum see *Asian-African Legal Consultative Committee, Report of the Eleventh Session*, Accra (Ghana) 183, 184 (1970) (hereinafter referred to as the *Report*).



to the universal application of these principles and in the opinion of the reviewer they were right in doing so. The Bangkok Principles seem to be sufficiently wide enough to cover, besides the so-called political refugees, "other refugees or displaced persons" whose interests were sought to be protected by the adoption of the above addendum. It is indeed surprising how the committee thought it logical or necessary to adopt the addendum when article IV and article V of the Bangkok Principles which provide respectively for the right of return and the right to compensation of the refugees had yet to be elaborated or modified in the light of the suggestions made by the secretariat of the committee in the study prepared by it on the subject. In other words, when articles IV and V of the Bangkok Principles were incomplete in so far as they did not provide for a dispute settling machinery for the implementation of the rights stated therein there was no urgency nor any cogent reason to provide for such a machinery in the case of what are called "other refugees or displaced persons" in contradistinction to the "political refugees" and thus going far beyond anything envisaged for the protection of the latter in the Bangkok Principles. If paragraph 5 of the addendum is interpreted to provide for the implementation of the right of return in the sense indicated above of "other refugees or displaced persons" not covered by the Bangkok Principles, then the stand previously taken by some states (Indonesia, Thailand, Japan) that the question of the implementation of the right of return of refugees might be examined by the committee at a suitable time<sup>2</sup> remains unexplained at the eleventh session. In view of the wording of paragraph 5 and the context in which it appears the contention is not ruled out that the international machinery provided therein is not available for the implementation of the right of return but is meant to determine disputes with regard to the status of displaced persons for the purpose of paragraph 4 or "any other dispute" in connection therewith. If, however, a contrary interpretation of paragraph 5 is ventured on the ground that such an isolation of paragraph 5 from paragraph 1 is artificial, it will be difficult to explain why paragraph 5 was put after paragraph 4. Moreover, if the intention of the committee was that "displaced persons" were "other refugees" as evident from the preambular paragraphs of the addendum, such an intention was not unambiguously expressed in the operative part, where the word "refugee" is conspicuously missing, and thus paragraph 1 represents an inadequate formulation of the intention of the committee from a definitional point of view. Besides, as a matter of construction or interpretation the provisions in the addendum are likely to present several other difficulties. It is not clear why the right of return which seems to be intended to be a legal right is also described as a natural right in paragraph 3. Is it the case that the right to compensation which is not

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2. *Id.* at 126, 127. On the question of the implementation of the right of compensation a similar view was expressed by these states. See the *Report* at 134, 135. For a change later on in the attitude of Japan see the *Report* at 135, 136.



described as a natural right is inferior to the right of return? Can it not be contended that the machinery for the determination of "any other dispute" under paragraph 5 is not available for the implementation of what is only a natural right? The expression "dependents" in paragraph 3 is likely to cause difficulties of a different nature. When the words "such matter" in paragraph 5 could have figured more appropriately as "such dispute" there was no reason why the present wording was chosen. The use of the words "such person" in paragraph 4 and "such a person" in paragraph 5 when either expression could have been consistently employed in both the paragraphs is a technical flaw in drafting which could have been avoided. The meaning of the expression "an international body" occurring in paragraphs 4 and 5 is not clear from the discussion at the eleventh session and if the Secretary-General of the United Nations fails to designate or constitute the international body as envisaged therein for one reason or another the value of the addendum as a workable solution to the problem sought to be tackled by the committee will be considerably reduced. The use of the words "mainly" and "adequately" in the opening paragraph of the preamble to the addendum is intriguing and almost every major expression of consequence occurring in the addendum lends itself to conflicting interpretations. The reviewer feels that the committee could have more usefully concentrated on a thorough reconsideration of the Bangkok Principles in the light of the suggestions made by the secretariat in the study on the subject prepared by it and then examined, if necessary, whether the interests of "other refugees or displaced persons" were not sufficiently protected by the Bangkok Principles. The adoption of the addendum is the only major accomplishment of the eleventh session of the committee and its value as a normsetting instrument with all the deficiencies noted above in a potentially explosive area of international relations will remain controversial.

At the eleventh session there was an unnecessarily prolonged discussion on the question whether the joint proposal of the delegates of Iraq and Pakistan containing some draft articles on the subject of the law of International Rivers<sup>3</sup> or the proposal of the Indian delegation regarding the first eight articles of the Helsinki Rules<sup>4</sup> should be taken up as the basis of discussion and finally it was agreed that both the proposals be circulated to the governments of the participating countries for the purpose of eliciting their views and observations. The wisdom of this course of action is liable to question when it is remembered that the joint proposal of Iraq and Pakistan and the first eight articles of the Helsinki Rules cover areas far apart. The committee could very well have circulated the first eight articles of the Helsinki Rules which were least controversial and, therefore, best suited as a starting point for discussion on the subject. The

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3. For the joint proposal of Iraq and Pakistan see the *Report* at 241-243.

4. For the Indian proposal see the *Report* at 244-246.



strain on the participating governments in considering both the proposals at the same time could also have been avoided as a result.

Compared to the discussion on the above two subjects which at times was acute, the subject of "The Law Relating to International Sale of Goods" evoked no discussion in the true sense of the term among the delegates of the participating governments. This is perhaps due to the reason that the question before the committee at that stage was to decide as to the direction that should be given to the Asian-African community in the handling of the subject and other related problems. The Report of the Sub-Committee on International Sale of Goods prepared by Dr. S.P. Jagota with notable skill<sup>5</sup> reveals that the delegates of the participating governments were in fact familiarising themselves with the intricacies of the subject. The subject of "International Legislation on Shipping" was placed on the agenda for preliminary discussion and the committee was to take up the question of bills of lading as the first topic. It is likely that the committee will be successful in presenting the Asian-African perspective to the above two subjects avoiding as far as possible any serious differences of opinion among the delegates of the participating governments.

This report will be warmly received, as were the previous reports of the committee, by scholars interested in the study of the Asian-African approach to the contemporary problems of International law. The study on "The Rights of Refugees"<sup>6</sup> and the preliminary study on "International Legislation on Shipping"<sup>7</sup> prepared with meticulous care by the secretariat of the committee are fairly of high quality and substantially contribute to the size of the report. There are, however, several printing mistakes in the report<sup>8</sup> which, it is hoped, will not recur in the future reports of the committee and the reference to Marjorie M. Whiteman, a woman, as Mr. Whiteman at p. 95 is an avoidable error.

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5. See the *Report* at 267-279.

6. For the study see the *Report* at 27-170.

7. For the preliminary study see the *Report* at 285-374.

8. For some examples see the *Report* at 134, 135, 178, 182.

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