

**RECENT ACTIVITIES OF THE LAW ASSOCIATION  
FOR ASIA AND THE WESTERN PACIFIC  
(LAWASIA)**

Memorandum by the Commonwealth Secretariat and  
a paper by Mr. DAVID GEDDES, Secretary-General  
of LAWASIA, Sydney, N.S.W. Australia

The annexed paper has been prepared at the invitation of the Secretariat to advise Ministers of the recent activities and areas of interest of LAWASIA, a major regional grouping of lawyers with an interest in promoting the Rule of Law, development, judicial assistance and professional co-operation.

2. As well as attracting a considerable individual membership both within and beyond the region, LAWASIA has succeeded in attracting private funds for its work from commercial concerns which see special benefits for international trade in LAWASIA's activities in the commercial field.

3. Ministers from within the LAWASIA region may be particularly interested in the Organisation's initiative in preparing a Code concerning the recognition and enforcement of foreign judgments, an area in which the Secretariat itself, has been particularly active in recent years.

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**ANNEX TO LMM(83)13**

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Prepared by  
Mr. DAVID GEDDES, Secretary-General of  
LAWASIA, Sydney, N.S.W. Australia

LAWASIA is a non-governmental organisation, an association of lawyers - private lawyers, government lawyers and law teachers. It is a regional organisation, membership being restricted to Asia and the Western Pacific. Membership is open to lawyers and associations of lawyers in countries which are members of ESCAP (Economic Commission for Asia and the Pacific). Other Asian and Pacific countries may be included by decision of the Council. Lawyers outside the region may be enrolled as Friends of LAWASIA and there is also provision for enrolling corporate subscribers and benefactors.

2. LAWASIA is a purely professional organisation and is controlled by the representatives of the member associations of practising lawyers in the member countries. Such associations nominate a member for their country on the Council of LAWASIA. Should more than one such association in a country be a member they jointly nominate the councillor for the country. LAWASIA is not governmental and does not engage in political activities.

3. LAWASIA was formed at a conference called by the Law Council of Australia in Canberra in August 1966. Representatives of 18 countries in the then - ECAFE (Economic Commission for Asia and the Far East) region attended the conference. A constitution and bylaws were adopted and subsequently ratified by the association of lawyers representing the countries which are now members. A list of member organisations appears at Appendix I.

4. LAWASIA holds conferences of members, conducts research projects into legal problems in the region, promotes contact between individual lawyers, and works through national bar associations and national committees for LAWASIA. It publishes a journal, LAWASIA, and has published a number of books resulting from its conferences and research projects.

5. LAWASIA has, in recent years, continued its traditional activities and has embarked upon activities in a number of new fields. In respect of the former, LAWASIA has continued to stage its biennial conferences, at which topics of concern in both the commercial law and social law areas have been discussed.

6. Conference topics in recent years include:-

(i) 1979, at Colombo, Sri Lanka.

- (a) International Institutions for the Protection of Human Rights
  - The observance of Human Rights in the LAWASIA Region
  - European Convention on Human Rights
  - The American Convention on Human Rights
  - United Nations Convention on Human Rights
  - Adoption of Existing Conventions on Human Rights in the LAWASIA Region
  - The establishment of appropriate international machinery for the Enforcement and Protection of Human rights in the LAWASIA Region.
- (b) Protection of Industrial and Intellectual Property in the Asian Region
  - Legislative rights and Relief -
    - Patents
    - Petty Patents (Utility Models)
    - Industrial Designs
    - Trade Marks
    - Service Marks
    - Copyright
    - Restrictive Trade Practices
    - Common Law Torts
    - Passing Off
    - Unfair Trading
    - Local Legislation and International Treaties
- (c) A Comparative Study of Defences and Defence Procedures in the LAWASIA Region
  - Defences -
    - Insanity
    - Duress
    - Provocation
    - Self Defence
    - Burden of Proof - has it changed in respect of substantive Offences?
  - Defence Procedures -
    - Plea Bargaining
    - Pleas of Guilty and Advice in respect thereof
    - Burden of Proof - shifting burdens (for example, in respect of drug offences and Security Act offences)
    - Procedures in respect of the use of insanity as a defence
    - Move towards codification in common law countries
- (d) Regional Co-operation in Legal Education
- (e) Application to the LAWASIA Region of the Law of the Sea Conference Resolution

The programme also include Meetings of the LAWASIA Standing Committees in the areas of Legal Aid, Commercial Arbitration, Environmental Law, Enforcement of foreign Judgments, and Law and Drugs, together with Meetings of the LAWASIA Judicial Section, the newly formed ASEAN Lawyers Section, and Interest Groups in the areas of Commercial Law, Family Law and Legal Practice Abroad.

- (ii) 1981, at Bangkok, Thailand:
  - (a) Commercial Law
    - Role of Multinational Corporations in the LAWASIA Region
    - International Commercial Arbitration and Enforcement of Foreign Judgments
  - (b) Criminal Law
    - Abortion
    - Corporate Criminal Responsibility
    - Criminal Sentencing and Procedure Criteria
  - (c) Investment Law
    - Co-operation in trade and investment between free enterprise and socialist countries and the examination of the role of State Trade Corporations
  - (d) Social Law
    - Labour Protection
    - Children and parental Rights
    - International Protection of Refugees
  
- (iii) 1983, Manila, Philippines (to be held between 9-13 September 1983 with the theme "LAWASIA and the New Dimensions of Development"):
  - (a) The Legal Aspects of the Changing International Economic Order: An Overview on the New Dimensions of Development in the context of the LAWASIA Region
  - (b) Law and Economic Development in the LAWASIA Region -
    - The role of law in providing the financial resources for development in the LAWASIA region
    - The legal control of restrictive business practices of transnationals: development and corporate accountability
    - The legal protection of foreign investments: development and fairness
    - The UN Convention on Contracts for the International sale of Goods: development and mutual benefit
    - Development and the International Legal Code on the Transfer of Technology
    - The 200-mile Economic Zone and its legal implications for development
  - (c) Law and Social Development in the LAWASIA Region -
    - Education and Public Health Laws: the imperatives of human resource development
    - Tax laws for social development in the LAWASIA region
    - Consumer protection laws and social responsibility
    - Land Tenure Laws: the needs of social justice
  - (d) The Institutional Role of Law in the Development of the LAWASIA Region -
    - The International Investments Insurance Agency: An idea whose time has come?
    - The Food Basket: An answer to the food crisis?

- ASEAN: A step in the right direction?
- The International Administration of Criminal Justice

(e) LAWASIA/LES Licensing Session -

This will include a basic licensing course, discussion of the economics of licensing technology into and out of developing countries; discussion of the unlawful appropriation of proprietary interests in industrial and intellectual property; and the Licensing Game.

(f) International Law Practice in the LAWASIA Region: Prospects and challenges

7. LAWASIA has also continued to publish its annual LAWASIA Journal, as well as a LAWASIA Directory of members to assist individuals to keep in touch with each other and co-ordinate in their service of the Rule of Law.

8. New activities have been undertaken by the Association in a number of areas.

### Human Rights

9. In 1979, the LAWASIA Council approved the establishment of a LAWASIA Human Rights Standing Committee. Composition of that Committee is as follows:

Co-Chairmen: Mr. Fali S. Nariman, Senior Advocate, Former Additional Solicitor-General, India

Mr. Patrick J. Downey, Chief Human Rights Commissioner, New Zealand

Members: Mr. E.A.G. de Silva, Practising Lawyer, Sri Lanka

Mr. Marcelo Fernan, Former President, Integrated Bar of the Philippines, Philippines

The Hon. Mr. Justice D.L. Mahoney, Supreme Court of N.S.W., Australia

The Hon. Kun Marut Bunnag, Minister of Justice, Thailand

Mr. Param Kumaraswamy, Practising Lawyer, Malaysia

Mr. Noboru Toishi, former Practising Lawyer, Japan

Mr. Anek Srisanit, Practising Lawyer, Thailand

Mr. David H. Geddes, LAWASIA Secretary-General

Secretary: Mrs. Patricia Hyndman, Australia

10. This Committee has been a most active one. It has formulated Ten Basic Principles of Human Rights which it believes are the basic standards which must be adhered to by regional countries at this time. These are set out in Appendix 2.

11. The Committee has also published the first volume of its "Trends in Human Rights", a document which is to be published from time to time, detailing current trends in human rights within the ESCAP region.

12. At the invitation of the United Nations, the LAWASIA Secretary-General submitted one of three background papers to the United Nations Seminar held in Colombo in June 1982, on "National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region". At that United Nations meeting, LAWASIA organised a meeting of non-governmental organisations represented at the Seminar. That meeting resolved that there should be a Coalition

of Asian human rights organisations, which would work towards the establishment of a regional Inter-Governmental Human Rights Commission in the LAWASIA region.

13. As LAWASIA had, in August 1981, organised a meeting with 14 Asian regional human rights groups in Bangkok, LAWASIA resolved that it would call another meeting of regional human rights groups to be held in New Delhi in October 1982. That meeting was held during the period 9-11 October 1982. It was attended by 34 human rights organisations from the ESCAP region. That meeting resolved to establish a Coalition of Asian Human Rights Organisations to work towards the establishment of an Asian Human Rights Commission, and the drawing up of an Asian Human Rights Charter. It also resolved to work towards the establishment of national human rights commissions in regional countries. The appropriate resolutions appear in Appendix 3.

14. It will be seen from those resolutions that the LAWASIA Human Rights Standing Committee has been requested to discharge the liaison role necessary for this coalition.

15. The LAWASIA Human Rights Standing Committee has also been active in the field of Judicial Independence, staging a Seminar in Tokyo in July 1982, which was attended by, *inter alia*, the Chief Justices of India, Sri Lanka, the Philippines and Thailand, and a former Chief Justice of Japan. Further Seminars of this kind, in the area of Judicial Independence, are planned by the Committee.

16. LAWASIA has also sent observers to regional trials and has finalised the translation of the United Nations Blue Book of Human Rights Documents into Thai, Philippino, Hindi, and Burmese and has also completed the translation into Malay. These translations will be distributed to human rights organisations working in countries where those languages are utilised, for subsequent reproduction and distribution by those organisations.

17. The LAWASIA Human Rights Standing Committee will be staging a Seminar on "Women and the Law in Asia" in Kuala Lumpur in May 1983, and will be organising the first major meeting of the Coalition of Asian human rights organisations in Manila in September 1983.

#### **Energy Law**

18. Following the successful IBA/LAWASIA Seminar on "Energy Law in Asia and the Pacific" held in Singapore in February 1982, LAWASIA has formed its own Energy Law Standing Committee, the secretariat of which will be based in Singapore. It is planned that this Committee will commission reports on, and arrange seminars on matters relating to aspects of energy law within the ESCAP area.

#### **Intellectual Property Standing Committee**

19. LAWASIA has established an Intellectual Property Standing Committee under the Chairmanship of Professor T. Doi of Waseda University in Tokyo. Other members of the Committee are Mr. Des Ryan of Australia and Mr. Rex Phillips of Sri Lanka. This Committee will be staging a Seminar with the World Intellectual Property Organisation in Bangkok in March 1983, on "The Roles of Government Industrial Property Authorities and the Legal Profession in Administering Industrial Property Rights in Asia and the Pacific".

#### **Enforcement of Foreign Judgments**

20. LAWASIA has a Standing Committee, under the Chairmanship of Mr. Bradford Caffrey, operating in this area. Mr Caffrey recently completed a doctoral thesis, a portion of which comprises a Draft Code on the Recognition of Foreign Judgments in the ESCAP Region. The Draft Code will be presented by Mr. Caffrey to the meeting of the LAWASIA Standing Committee on Enforcement of Foreign Judgments in Manila, in September 1983.

## MEMBER ORGANISATIONS

**AUSTRALIA**

Law Council of Australia  
 Law Society of New South Wales  
 New South Wales Bar Association  
 Queensland Bar Association  
 Queensland Law Society Inc.  
 Law Institute of Victoria  
 The Victorian Bar  
 The Law Society of Western Australia  
 Law Society of South Australia Inc.  
 Women Lawyer's Association of N.S.W.

**FIJI**

The Fiji Law Society

**HONG KONG**

The Law Society of Hong Kong  
 Hong Kong Bar Association

**INDIA**

Bar Association of India

**INDONESIA**

Mahindo  
 Indonesian Jurists Association  
 Indonesian Judges Association  
 Indonesian Bar Association  
 Indonesian Prosecutors Association

**IRAN**

The Iranian Jurists Association  
 The Bar Association of Iran  
 The Bar Association of Tabriz  
 The Bar Association of Shiraz

**JAPAN**

The Japan Bar Association

**KOREA**

The Korean Federal Bar Association  
 Korean Law Professors Association  
 Korean Legal Centre

**MALAYSIA**

Bar Council (States of Malaya)

N.B. The Bangladesh Legal Practitioners Association  
 is represented among the general membership

**NEPAL**

Nepal Bar Association

**NEW ZEALAND**

New Zealand Law Society  
 Auckland District Law Society  
 Canterbury and District Law Society  
 Wellington District Law Society  
 Hamilton District Law Society

**PAKISTAN**

High Court Bar Association, Karachi

**PAPUA NEW GUINEA**

Papua New Guinea Law Society Inc.

**PHILIPPINES**

The Integrated Bar of the Philippines  
 The Philippine Bar Association  
 The Philippine Lawyers Association  
 FIDA, Philippines  
 The Women Lawyers Association  
 of the Philippines

**SINGAPORE**

The Law Society of Singapore

**SRI LANKA**

The Bar Association of Sri Lanka

**TAIWAN**

The National Bar Association  
 of the Republic of China  
 The Chinese Society of Comparative Law

**THAILAND**

The Thai Bar  
 The Lawyers Association of Thailand

LAWASIA HUMAN RIGHTS STANDING COMMITTEE

Basic Principles of Human Rights

Principle 1

- (a) Everyone has the inherent right to life, and shall not be arbitrarily deprived of his life.
- (b) The death penalty may be imposed only for the most serious crimes, and after fair public trial on evidence presented to a legally competent, independent and impartial tribunal.

Principle 2

- (a) Everyone has the inherent right to liberty and security of person, and shall not be subjected to arbitrary arrest or detention.
- (b) Anyone who is arrested or detained shall be informed of the reasons therefor at the time of his arrest and shall be entitled to communicate the fact of his arrest to a person of his choice.
- (c) Anyone arrested shall be entitled to access to counsel of his choice.
- (d) Anyone charged with an offence is entitled to a fair and public trial within a reasonable time by a legally competent, independent and impartial tribunal.

Principle 3

Everyone is equal before the law and is entitled without any discrimination to the equal protection of the law.

Principle 4

No one shall be held guilty of any criminal offence for any act or omission which did not constitute a criminal offence when it was committed.

Principle 5

- (a) Anyone deprived of his liberty shall be treated with respect for his inherent dignity as a human person.
- (b) No one shall be subjected to torture, or to cruel, inhuman or degrading punishment or treatment.

Principle 6

No one should be subject to preventive detention, but in those countries where preventive detention exists, everyone so detained shall be entitled to prompt, periodic review of his detention by a legally competent, independent and impartial tribunal.

Principle 7

- (a) No one shall be arbitrarily deprived of the right to enter his own country.

- (b) Anyone who is an alien, lawfully in a country, shall not be expelled except pursuant to a decision reached in accordance with the law in force at the time he entered the country.

#### Principle 8

No one shall be subject to coercion which would restrict his choice of religion or belief. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### Principle 9

To ensure the enjoyment of these minimum standards, everyone is entitled to have legal assistance available to him.

#### Principle 10

These principles have been formulated on the basis that they are the minimum standards to be observed at all times after allowing for the fact that emergencies threatening the life of a nation may occur from time to time.

#### APPENDIX 3

### RESOLUTION PASSED AT MEETING OF THIRTY-FOUR NON-GOVERNMENTAL HUMAN RIGHTS ORGANISATIONS FROM THE ESCAP REGION CALLED AT THE INVITATION OF THE LAWASIA HUMAN RIGHTS STANDING COMMITTEE NEW DELHI - 9-11 OCTOBER, 1982

#### Resolution Establishing a Coalition of Human Rights Organisations in the ESCAP Region

At this meeting of 34 human rights organisations in the ESCAP region representing 12 countries (following a similar meeting held in Bangkok in August, 1981), both called at the invitation of the LAWASIA Human Rights Standing Committee, it was unanimously resolved to establish a Coalition of human rights organisations in Asia - a Coalition which will work towards the establishment of an Asian Charter of Human Rights and an Asian Human Rights Commission (similar to the Commissions now existing in the continents of Africa, Europe and America).

The meeting :

**RESOLVED** that the LAWASIA Human Rights Standing Committee be authorised by this meeting to undertake the co-ordinating role for this new Coalition.

**RESOLVED** that the LAWASIA Human Rights Standing Committee be authorised to take steps in furtherance of this Coalition and to carry out the administrative task of formulating a three-year plan of co-ordinated activities for its members/affiliates.

(Note: Regional representatives of large organisations such as Amnesty International, Lutheran World Service, Red Cross, World Jewish Congress, and the YWCA, which already have the benefit of world-wide organisations, wholeheartedly supported the above resolution).

**RESOLVED** that as a first activity of this new Coalition, studies and research on regional issues in the field of human rights be conducted and two working papers be prepared for the Manila Conference in September, 1983, on the following subjects, viz:

- (1) Adequacy of laws affecting women in the ESCAP region and how far they are implemented.
- (2) Preventive Detention - law and practice in the ESCAP region.

RESOLVED that LAWASIA should take all steps to organise a regional workshop with the assistance of the United Nations to review the conclusions of the inter-governmental meeting in Colombo held in June, 1982, and to ascertain the role that can be played by NGO's in implementing the decisions taken at that meeting, and to further study what other roles the NGOs can play in promoting the institutionalisation of human rights concerns.

RESOLVED that having regard to the increasing concern of peoples all over the world with human rights and as a step towards the establishment of an Asian Human Rights Commission, this meeting of representatives of 34 human rights organisations representing 12 countries called at the invitation of the LAWASIA Human Rights Standing Committee RECOMMENDS that a Human Right Commission should be set up in each of the countries in the LAWASIA region and that this recommendation be sent to the Heads of Government in each of the countries in the region.

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