Discussion in Session V

One of the main discussions in this session involved child labor and social clauses.

A question was raised as to whether the prohibition of child labor has become a peremptory norm which binds all countries. Some participants expressed skepticism about outlawing child labor. The reasons given were that different countries are at different levels of development, with their own parameters, and hence no one can be sure whether or not banning child labor is right. In addition, the prohibition of child labor cannot be a peremptory norm unless sufficient conditions are created at the ground to ensure that children can enjoy all human rights. Also, a suggestion was given that other international instruments and institutions such as the UN Convention on the Rights of the Child and UNICEF be considered.

Dr. Ago agreed that the prohibition of child labor has not entered the sphere of a peremptory norm. Rather he stated quite categorically that he was against the idea of including child labor into the group of fundamental human rights norms upon which the ILO bases its activities. The reason for this is that the ILO can be expected to take severe sanctions against countries allow child labor to occur. But in fact the question of child labor is a delicate one. It is easy to ban products produced by children, because consumers in the West do not suffer. But what happens to the poor families and the children themselves? Would they not be forced into more unscrupulous underground activities? So Dr. Ago stressed that child labor should not be tackled by economic sanctions or bans, but rather by providing assistance for education and other means of living.

Dr. Ago also stated that he was categorically against giving importance to social clauses in trade agreements. But at the same time, he stressed the importance of incorporating social aspects into their activities. He said that the ILO has committed a grave error by linking two different kinds of things together, i.e. economic factors and social purposes. The two should be distinguished and should not be automatically incorporated in one rule by, for example, the insertion of social clauses into trade agreements. On the other hand, the international financial institutions and private enterprises cause many problems, so there is a need for the incorporation of social aspects with regard to their conduct.

Another question was raised on whether or not national governments should consider both social development and economic development when asking for assistance from international financial institutions. Dr. Ago responded that the goals of economic and social development should be met and harmonized at the final stage, especially at the national level. This failed to happen, however, in the so-called "development dictatorships," where the economy was given priority over social development. He stated, though, that with the improvement of government structure, this problem will hopefully be solved.

The speakers and participants gave additional information on laws regarding disabled persons, environmental protection and Shariah Courts. A proposal was made regarding the need to create a mechanism to share legal knowledge and legal documents among Asian Countries.

Mr. Sakumoto supplemented this report giving a picture of environmental laws and regulations in Asia. He explained that most Asian countries have created so-called "Framework Acts" which provide guiding principles. They also have specific acts for water pollution, air pollution, etc., as well as regulations, orders, and local ordinances. Environmental law in Asian countries can be divided into two types. One is the pollution prevention approach and the other the environmental management approach. Malaysia, Singapore and Thailand take the former approach, whereas Indonesia and the Philippines take the latter. Under the former approach, certain regulations or sanctions are applied, whereas the latter is a kind of a mixed approach, which includes policies and economic means.

A question on Shariah Courts was raised, namely whether or not Shariah courts cover areas other than family law. And what happens when a non-Muslim wants to marry a Muslim. This question was brought up because in Indonesia, Muslims and non-Muslims were able to marry only up until the Marriage Law of 1974. But now, Islamic Law is becoming stronger and stronger in spite of the existence of mixed couples, and problems have arisen concerning their marriages and children. In the Philippines, the jurisdiction of Shariah Courts only covers the Muslim Code of Personal laws, which includes issues of family, succession and property. When a Muslim marries a Non-Muslim, the marriage is governed by the law under which they were married. In India, because there are many different communities, there is a special marriage act, which assures family members with different religions of the same legal rights.