9. The question of the passage of one year following the cessation of military operations, known as the "after one year" article was discussed at great length in the diplomatic conference of the year 1949. Scholars were of this belief that the existence of such cases as those of post-war Japan and Germany,[55] has been the reason for such provisions, and that the Geneva Protocol of 1977 repudiates the one-year condition as mentioned earlier. Article 3 of the aforementioned Protocol simply stipulates that :

"The application of the Conventions and of this Protocol shall cease, in the territory of parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation . . . .".

10. In this very connection, such scholars as Bothe, Partsch and Solf[56] write that :

"Article 6(3) of the Fourth Convention . . . . was a special ad hoc provision for certain actual cases, namely the occupation of Germany and Japan after World War II, there is no reason to continue to keep in force such provisions designed for specific historic cases. In 1972 the majority of Government Experts expressed a wish to abolish these time limits."

The occupation regime of al-Qods claims that the application in the occupied territories of the Geneva Convention IV, 1949, is not needed, because this regime is carrying out the humanitarian provisions of the Geneva Convention of 1949 in a de facto manner.[57] Such an opinion is completely unacceptable. Because, de facto execution of regulations is different from its de jure acceptance. Besides, there exist two strong arguments which make the claim of the occupation regime of al-Qods unacceptable. First, it is not known if the "humanitarian provisions" referred to by the occupation regime of al-Qods are the same provisions as stipulated in the convention, or simply this regime's own interpretations of humanitarian regulations.

11. Second, it has been repeatedly noticed that the occupation regime of al-Qods has officially refused to implement the provisions of the Convention. Such cases of refusal to comply with the Convention should be added to numerous cases of the violation of the rights of the people of the occupied territories and the establishment of Jewish settlements in the occupied territories.

12 The recent resolution of the UN Security Council, denouncing the acsts of the occupation regime of al-Qods, on he other hand, substantiates this idea. The most recent claim made by the occupation regime of al-Qods to justify its violation of the provisions of the Geneva Convention 1949 (reported by Guardian Weekly, 10 January, 1988) was that since this regime cannot inflict capital punishment on the convicts, it has to expel them.

13. The Government of the Islamic Republic of Iran calls on the Secretariat of the Asian-African Legal Consultative Committee to study the fact that in accordance with the international law, the deportation of the residents of the occupied territories is illegal and condemned. It is also requested to examine the violations by the occupation regime of al-Qods of the above case, taken place since the very inception of this regime, that has not been recognized by many of the member States of the international community including Iran. The Secretariat shall report to member States accordingly. But considering the intensification of the Zionist regime's crimes, the Secretariat is requested to submit an interim report to the member States before embarking on carrying out its comprehensive studies.

14. It should be reminded that the unanimous adoption in Singapore meeting of the project to conduct this study and its inclusion in the Committee's agenda reflect the general concern of the member States over the crimes committed by Zionist regime.

55. 1977 Protocol I, Additional to Geneva Conventions.
56. Bothe, Partsch and Solf, "New Rules for Victims of Armed Conflicts" 1982, p. 254, m. 16.
57. Halim H. Cohn, Rule of Law in the Areas Administered by Israel, Tel Aviv, 1981 p. VII. BYIL. p. 289.

VI. Elements of a Legal Instrument on Friendly and Good Neighbourly Relations between States of Asia and the Pacific

(i) Introduction

The subject, "Elements of a Legal Instrument on Friendly and Good Neighbourly Relations between States of Asia and the Pacific" was included in the programme of work of the AALCC at the initiative of the Government of Mongolia at the Twenty-fifth Session of the AALCC held at Arusha in 1986 under the article 3(b) of the Committee's Statutes. Accordingly a preliminary study was prepared by the Secretariat for discussion at the Twenty-sixth Session held in Bangkok in 1987. The discussion forcussed on the following :

(i) Charting and describing the parameters and scope of the proposed international instrument;

(ii) Finalizing the list of relevant existing international instruments on the basis of which the principles and norms of international law to be incorporated in the proposed international instrument;

(iii) Identifying the principles and norms of International Law which the Committee might consider as appropriate for inclusion in the proposed international instrument; and

(iv) Modalities for future work on the subject by the Committee.

The Secretariat study had listed 28 international instruments, 34 bilateral agreements and treaties and 34 norms and principles of

international law conducive to the promotion of friendly and good-neighbourly relations which were considered to be adequate references for identifying and crystallizing the legal elements for incorporation in the proposed international instrument.

After elaborate discussions, it was decided that

(i) the scope of the study should also include Africa;

(ii) the relevant legal instruments listed in the Secretariat study should be updated;

(iii) the principles and norms of international law conducive to the promotion of friendly and good neighbourly relations among States should be re-grouped and re-oriented in the light of the suggestions put forward during the plenary meeting; and

(iv) a Special Rapporteur should be appointed for further work on the topic. Mongolia was designated as the Special Rapporteur for one year with the mandate to prepare and submit a report at the Twenty-seventh Session and that the scope of the study would cover Africa as well.

At the Singapore (Twenty-seventh) Session the Special Rapporteur[1] submitted his report according to the mandate given to him at the Bangkok (Twenty-sixth) Session. The report was well received by the member States of the AALCC. The analysis carried out in the report of the process of development of international relations and international law had showed that just like the ongoing scientific and technological revolution the process of development of international relations and international law was irreversible and therefore international law-making to be effective must be in step with the development of international relations, be it in the sphere of ensuring security, protection of environment, economic and trade relations or protection of human rights. According to him, that analysis had also showed that for the general principles to be more effective, their content should be clearly identified and ampified when necessary, especially by the subjects of law that were to be governed by them. He felt that this was applicable to fundamental principles of international relations including those governing relations among the States of Asia and Africa.

For practical convenience he conditionally classified the principles in the report under the following categories: those aimed at (i) Ensuring

1. Dr. Jargalsaikhany Enkhsaikhan.

peace, international and national security of states; (ii) Promoting the development of good-neighbourliness and international cooperation among States; and (iii) Ensuring the inalienable rights of peoples and international cooperation for the protection of fundamental human rights and freedoms.

Member States commended the Special Rapporteur for his excellent report and discussed it in detail. The main points of the discussion were summed up as follows (i) Although the report had reflected the elements and principles enunciated in various other instruments the Committee should make its own contribution in this field; (ii) Although some delegations had laid emphasis on implementation of the principles already existing in numerous instruments, rather than enunciation in a new legal instrument, it was felt that re-stating them in a legal form would certainly help.

The Committee requested the Rapporteur to prepare a substantive report on the first cluster of principles on the basis of replies received from member Governments and the comments expressed. Member Governments were requested to submit their written comments to the Committee's Secretariat as soon as possible and the Rapporteur was asked to present his next report for Committee's consideration at its Twenty-ninth Session (Beijing).

The substantive report on the first cluster of norms prepared by the Special Rapporteur for consideration at the Beijing Session was not sbjected to indepth debate as most delegates had not had adequate time to consider the said Report.

It was decided to include this item in the agenda of the thirty-first Session of the Committee and member Governments were requested to submit to the Committee's Secretariat their written comments on the first cluster of principles as well as on the last report of the Rapporteur.

(ii) Decisions of the Twenty-ninth Session (1990)

Agenda item : The Elements of A Legal Instrument of Good Neighbourly Relations etc.

- The Committee takes note of the report prepared by the Special Rapporteur contained in Doc. No. AALCC/XXIX/90/23;
- Requests the Member governments to submit to the Committee's Secretariat their written comments on the first cluster of principles contained in Doc. No. AALCC/XXIX/90/5 as well as the last report of the Rapporteur contained in Doc. No. AALCC/XXIX/90/23;
- Decides to include in the agenda of the XXXI Session of the Committee the item entitled "Elements of Legal Instrument on Friendly and Good Neighbourly Relations between States of Asia, Africa and the Pacific.

(iii) Secretariat Studies :
(a) Elements of a Legal Instrument on Friendly and Good Neighbourly Relations of States of Asia and The Pacific

Note by the Secretary-General

The item "Elements of a Legal Instrument on Friendly and Good Neighbourly Relations of States of Asia and The Pacific" had been taken up by the AALCC following a reference made by the Government of the Mongolian People's Republic in accordance with Article 3(b) of the Committee's Statutes. The decision to inscribe the item on the agenda of the Twenty-sixth Session was taken up at a meeting of the Heads of Delegations at the Twenty-fifth Session of the Committee held at Arusha (Tanzania) in February 1986. A preliminary note on this topic has been prepared by the Secretariat in accordance with normal practice.

In identifying the principles and norms relevant to friendly and good neighbourly relations it is to be pointed out that those may conceivably cover a broad spectrum of inter-State relations i.e., politico-legal, social, economic, cultural and humanitarian aspects. Such principles and norms would include both the rights and duties of States and a large number of these would, perhaps, be of the nature of *jus-cogens* i.e. peremptory norms of general international law. In addition it may be deemed necessary to identify and develop certain principles and norms to subserve and suit the unique characteristics of the region. In view thereof the directions of the Committee at the initial stages about the scope of the study and the topics to be covered is of utmost importance.

In view of the complexity of the subject it is felt that the work on the topic would need to be undertaken in progressive stages both in regard to preparatory studies and in the examination of the contents of the proposed instrument. In this regard it is submitted that in the first stage the Committee could decide upon the parameters and scope of the study as also settle the list of existing international instruments recourse to which may be had in tentatively identifying the principles and norms of international law for inclusion and

incorporation in the proposed international instrument. The second stage could entail the preparation of a draft international instrument on the basis of principles and norms found in existing instruments together with explanatory notes for consideration by the Committee or a Working Group. The next stage could, perhaps, involve the inclusion and incorporation of new and emerging principles and norms as may be decided upon by the Committee in the course of its consideration of and deliberations upon the draft international instrument. In the light of the special nature of this project as also the complexity of the work involved it was for consideration whether a Special Rapporteur could be appointed to prepare formulations and coordinate the progress of work through its various stages as envisaged above. The appointment of a Special Rapporteur was to facilitate further consideration of the item at the subsequent sessions of the Committee.

Mongolia was designated as the special Rapporteur for one year with the mandate to prepare and submit a report at the Twenty-Seventh Session (Singapore). At the Singapore Session the Special Rapporteur submitted his report according to the mandate given to him at the Bangkok session.

Preliminary Note Prepared By The Secretariat

A. Background

The item "Elements of a Legal Instrument on Friendly and Good-Neighbourly Relations of States of Asia and The Pacific was taken up by the AALCC following a reference made by the Government of the Mongolian People's Republic. At the time of submitting the item for inclusion in the work programme of the Committee the Mongolian People's Republic had in its Memorandum stated that :

> "Three decades have elapsed since the adoption by the historic Bandung Conference of a set of principles aimed at ensuring peace and developing cooperation among the peoples of Asia and Africa. Those principloes had a positive impact on international relations, contributing to a certain extent to the creation of a non-aligned movement as well as of the Organisation of African Unity. They also played a positive role in the Asian and the Pacific region. Since then many peoples on the Asian continent have made progress in their socio-economic development, while most of the peoples of the Pacific region have gained their independence.

However, the over-all situation in the region continues to be of serious concern to the peoples of the region and of the entire world. Since the end of World War II, wars and conflicts have plagued and continue to flare up in various parts of the region, for example the Middle East. Hot-beds of conflict and tension persist and could explode at any time. Recently certain parts of the region have been rapidly becoming arenas of disturbing military build-up, including nuclear build-up, with all its potential dangers. The extension of the arms race to the various parts of the region is forcing many countries to squander for military purposes the colossal financial and human resources that are so crucial for the solution of the acute socio-economic problems facing them, problems such as poverty, malnutrition and disease, problems of refugees, problems connected with overcoming the legacies of the colonial past, and arising out of ethnic and religious differences, the solution of which requires both increased attention and enormous economic, financial and intellectual resources. Furthermore, new political, socio-economic, environmental and other problems are arising that need to be addressed individually or jointly.

In these circumstances, and in order to further strengthen, *inter alia*, the legal basis of inter-State relations of the States of the region aimed at eliminating the sources of conflict and mutual suspicion, and enhancing the security and developing cooperation of States, the Government of the Mongolian People's Republic considers that the principles and norms regulating these relations in the region should be carefully examined, developed and concretized, taking due account of the process of codification and progressive development of general international law as well as the rich practical experience of the past decades of international relations, especially in this vast region.

The Government of the Mongolian People's Republic further believes that given the thirty years of fruitful work of the Asian-African Legal Consultative Committee, its well-known competence in the legal field, the Committee could consider the legal aspects of strengthening friendly and good-neighbourly relations of the States of Asia and the Pacific. To this end, the Government of the Mongolian People's Republic proposes that an item entitled "Elements of a legal instrument on friendly and good-neighbourly relations of States of Asia and

the Pacific" be inscribed in the agenda of the twenty-sixth session of the Committee, under Article 3(b) of its Statutes."

At the Twenty-fifth Session of the Committee held in Arusha (Tanzania) the delegate of Mongolia in introducing the subject had *inter alia* stated that the

> "Legal questions pertaining to strengthening good-neighbourly and friendly relations of the State of Asia and the Pacific could be examined. Thirty years ago the Bandung Principles were adopted. Taking into consideration the experience of the past three decades of international relations, and especially in the Asian and the Pacific region, as well as the codification and progressive development of international law since then, the general principles of good neighbourliness and friendly relations could be amplified and developed in the specified conditions of the region. The AALCC could examine legal aspects, legal elements that make up such relations."[2]

In a further memorandum on the item subsequently submitted to the Secretariat the Mongolian People's Republic stated, *inter alia,* that :

> "The past three decades of international relations and practice, especially in the Asia-Pacific region, have clearly demonstrated the fundamental importance of the Bandung principles, their essential role in inter-State relations. These principles and the "Bandung Spirit" have been embodied in many declarations, bilateral and multilateral treaties and conventions. The viability of the principles lie in the fact that they correspond to the objective needs of ensuring peace and security as well as developing mutually beneficial cooperation among States. Furthermore, from strictly legal point of view, they fully correspond to the principles and aims of the Charter of the United Nations, other legally binding instruments, the declarations and resolutions of the General Assembly of the United Nations, including the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of Disputes, the Declaration on the Strengthening of International Security, the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, etc.
>
> At the same time it should be pointed out that though these principles play an important role as general guiding principles of relations among States of the region, their very general nature at times allow different, and even quite opposite, intepretations, with all the ensuing consequences. It is therefore quite timely and propitious, on a joint basis, to develop and enrich the content of the Bandung principles taking into account the past experience of the States of the region as well as the needs of the future (only 17 Asian States have taken part in the 1955 Bandung Conference). This could lead to their uniform interpretation and hence to strict observance.
>
> Codification of these principles in relation to the States of the Asia-Pacific region is also facilitated by the rich and relevant international documentation mentioned above that is available to States."

2. *Asian-African Legal Consultative Committee Twenty-fifth Session*, Arusha (Tanzania) 3rd-8th February, 1986. Verbatim records of the Discussion, Ist Plenary Meeting at p. 17.

B. Some General Observations

The "War to end all Wars" ushered in its wake a new dimension in the future growth and development of international law on a universal basis centred around the nucleas that war as a legitimate means of settling disputes was outlawed. In the context of the U.N. Charter, therefore, the maintenance of international peace and security and the promotion of friendly relations among nations became the prime objective of inter-State relations to be fostered and strengthened through progressive development and codification of the legal principles suited to the purpose. It is, therefore, hardly surprising that a trend in favour of bilateral agreements of peace, amity, friendship and cooperation gained ground. The late fifties withnessed the emergence and wide acceptance of the themes of *Panch Shila*, peaceful co-existence and development of friendly relations. The cold war inspired the adoption of the Bandung Declaration and the birth of the Non-alignment Movement. The resurgence of Afro-Asian States following the United Nations Declaration of the Granting of Independence to Colonial Countries[3] increased the number of the members of the international community intent on consolidating their political independence with social and economic emancipation in a climate of international peace, amity, good-neighbourliness and friendly relations between States. Thus the African States codified the norms

3. See General Assembly Resolution 1514 (XV) of December 15, 1960.

of inter-State relations vis-a-vis each other which found reflection in the legally binding document—the Charter of the Organisation of African Unity.

(i) Friendly Relations

The principle of friendly relations may be said to be as old as inter-State relations itself. However, if the history of law hiterto has been from molar to molecular motion, the connotation and content of the term "Friendly Relations" has varied from time to time. Be that as it may, the concept of friendly relations like the concept of good neighbourly relations finds specific mention in a large number of multilateral conventions and plurilateral and bilateral treaties. It may be recalled that the development of "friendly relations" among nations is among the purposes of the United Nations.[4] The elements of the concept of friendly relations, like those of the concept of good neighbourly relations lay scattered and were thus amenable to various, at times contradictory, interpretations until they were consolidated and codified in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations adopted by the General Assembly of the United Nations.[5] That declaration enumerated a set of seven principles which may be termed to be the hard core of friendly relations and also elucidated their exegesis. There are some common elements or denominators that are common to the two concepts viz., friendly relations and good neighbourly relations.

(ii) Good-Neighbourly Relations

The term good neighbour—from which is derived the adjectivial clause, good neighbnourliness—was first employed in the context of inter-State relations in 1933 when the then U.S. President Franklin Roosevelt in his inaugural address spoke, *inter alia*, of the "good neighbour who resolutely respects himself and because he does so respects the rights of others..." It may be mentioned that the U.S. "Good Neighbour Policy" of the 1930's embodied the idea that international relations, should be conducted on the basis of sovereign equality and mutual cooperation.

4. See Article 1, paragraph 2 of the Charter of United Nations.
5. See G.A. Resolution 2625 (XXV) of 24 October 1970.

The terms "good neighbours" or "good neighbourly relations" and the like find specific mention and reference in a number of multilateral, plurilateral and bilateral international instruments. Thus the Preamble of the Charter of the United Nations, *inter alia*, underscores the determination of the peoples of the United Nations "to practice tolerance and live together in peace with one another as good neighbours". Preambulatory pragraph 3 of of the Charter of the Organisation of American States (the Bogota Charter) stipulates, *inter alia*, that the "solidarity and good neighbourliness can only mean the consolidation of this continent".[6] A large number of bilateral treaties registered or filed and recorded with the Secretariat of the United Nations refer to or mention the concept of good neighbourly relations or good neighbourliness either in the title or the preambulatory clauses and articles.[7] Although a large number of international instruments—whether of a multilateral, plurilateral or bilateral character or nature—refer to good neighbourliness or to good neighbourly relations between States the precise content or connotation thereof are, however, not always patently clear. This is mainly due to the diverse, at times contradictory, interpretations of its many, general elements. The two common denominators of note in bilateral instruments are that the term "good neighbourly relations" or its adverbial form i.e., good neighbourliness, is employed in a large number of treaties of peace, friendship and mutual cooperation and that in most of these, there is a close geographical proximity or contiguity between the States parties. The term has, *inter alia,* been employed in international/bilateral agreements demarcating maritime boundaries between States parties. It may be stated, however, that spatial proximity or geographical continguity is not of the essence of good-neighbourly relations.

Be that as it may the elements of friendly and good-neighbourly relations often allude comprehension mainly because they are a mixed bag of substantive, prescriptive, and procedural principles and norms and are to be found in many international instruments. There is, however, no denying that friendly and good-neighbourly relations are not an end in themselves rather they are the means to the end of maintenance of international peace, security and stability.

An essay aimed at identifying, enumerating and elucidiating the principles and norms conducive to the promotion and preservation of friendly and good neighbourly relations between States that are unanimously accepted and universally observed would entail a detailed

6. For the English text of the Bogota Charter See *UNTS* Vol. 119 (1952), p. 48.
7. See *infra*.