

He further stated that the post Cold War -world had seen a mushrooming of ethnic, religion-based conflicts within countries and had witnessed the phenomenon of cross border fomentation of such conflicts through support to terrorism and insurgency. Misguided external pressures had precipitated the disintegration of a number of multicultural and multiethnic states. He was of the view that while internationally accepted standards of conduct are an obligation on all sides of any conflict, international or internal, the problem arose with the desire for intrusive external monitoring. Outside parties, including NGOs, had not always provided a model of disinterested behaviour in such situations. If the desire for closer external scrutiny could sometimes result in worsening the situation of compliance he asked for consideration to be given to whether a more benign approach based on "soft law" might provide better results. Professor Greenwood, he observed, had also underlined the need to clarify the laws applicable to the conduct of military operations by the UN itself.

Recalling the fact that Professor Greenwood' report was written before the Statute of the International Criminal Court was adopted at Rome he observed that the views of countries which include two third of humanity were excluded in developing the international law on crimes against humanity. The role accorded to the UN Security Council raised troubling questions relating to the basic principles of equality among nationals and peoples and the five permanent members of the Council had been placed on a pedestal by the rest of the world accepting that their leaders, officials and soldiers cannot ever be accused before the ICC of committing grave crimes of International concerns. Since the Council has been provided the power even to capture non-Parties to the ICC within its purview, we may witness the legally absurd situation of non-Parties triggering ICC jurisdiction on other non-parties. The deliberate decision to exclude the use of weapons of mass destruction from the listing of war crimes, juxtaposed with the inclusion of relatively innocuous types of weapons in the list, sends a perplexing message to the international community.

He also stated that while the international community can take comfort at the conclusion of the chemical Weapons Convention which agreed to eliminate a whole class of weapons of mass destruction, the record of achievement in the area of disarmament since the Hague Peace Conference of 1899 and 1907 has not been very encouraging Mr. Lahiri pointed out that the right of first use of nuclear weapons continues to be asserted, together with new doctrines expanding the contingencies for such first use. Despite the important advisory opinion rendered by the International Court of Justice on the legality of the use of nuclear weapons, and the overwhelming international public opinion for eliminating nuclear weapons, there is stubborn refusal on the part of some States possessing nuclear weapons even to engage in multilateral discussions on the issue. The abolition of nuclear weapons must be the highest priority in the unfinished agenda of this Hague theme for the 21st Century.

Mr. Lahiri pointed out that the Report on the settlement of disputes brings out that despite the impressive institutional structure available, and the vast reservoir of theory and study built up over the years, for the peaceful settlement of international disputes through third party intervention, diplomacy and direct negotiations remains by far the preferred option. Attempts to lower the threshold for third party intervention, whether through increasing the availability of mechanisms, or a permissive culture could well have the paradoxical effect of mailing the party with a weaker case more recalcitrant in the hope of a Solomonic judgment from third parties. Preventive diplomacy is certainly preferential to a proliferation of disputes. But the preferred form of preventive diplomacy should be strengthening of multilateralism and international cooperation in the development both of hard and soft law. The classical dispute settlement mechanism provided for under the Charter should not be weakened and distorted. He said that as a "Friend of 1999", the Government of India was happy to be associated with the meeting.

The vote of thanks was delivered by Professor Salah Amer of the Arab Republic of Egypt. He thanked the Member Governments of the Committee for their interest in the functions and activities of the Committee and their co-operation and for the keen interest that they have evinced in the Meeting. The

unwavering faith of the Member States of the Committee in the utility of the work of the Committee had contributed in no small measure to the attainment of the world wide recognition that the Committee enjoyed. He also expressed appreciation for the non-Member States who supported the work of the Committee.

The discussion during the three substantive sessions of the two-day meeting revolved largely around the presentations made by a group of experts drawn from both member and non-member states of the AALCC. These had included Professor Franciso Oreggo Vicuna; Professor Christopher Pinto; Professor Rahmatullah Khan; Professor V.S. Mani; Professor B.S. Murthy; Dr. Raja Mohan; Professor B.S. Chimni; Mr. K. Subhramanyam and the representative of the International Committee for the Red Cross (ICRC) Dr. Umesh Kadam and Dr. (Ms) Z. Noparast. The meeting appointed three Moderators to facilitate discussion on the themes of the First International Peace Conference. Accordingly, the meeting also appointed three Rapporteurs to facilitate the task of rounding up the deliberations of the meeting. All in all, the debate in the course of the meeting was informal in nature wherein all the participants spoke in their individual capacities and, no formal conclusions or resolutions were adopted.

#### **First Substantive Session**

The first substantive session of the AALCC Meeting to consider the three Preliminary Reports on the Themes of the First International Peace Conference to consider the question of the "Peaceful Settlement of Disputes: Prospects in the 21st Century" was chaired by the President of the AALCC Dr. P.S. Rao. The basic working document of this session was a Report on "The Peaceful Settlement of Disputes: Prospects for the Twenty-first Century" jointly prepared for the 1999 Centennial Commemoration of the First Hague Peace Conference by Professor Francisco O. Vicuna and Professor Christopher Pinto.<sup>4</sup>

To facilitate the consideration of the aforementioned Report and to guide discussion on the issues raised therein Professor Quizhi He, Legal Adviser, Ministry of Foreign affairs of the People's Republic of China and a distinguished member of the International Law Commission was appointed Moderator. To

<sup>4</sup> This Report had been circulated by the Secretariat as Document No. AALCC/UNDIL/CFPC/1991/1.

facilitate the adoption of a Report Mr. S.M. Confiado (Philippines) was appointed Rapporteur for the Session. Following upon the introductory remarks of the Moderator the two Rapporteurs, Professor F.O. Vicuna and Professor Christopher Pinto made presentations by way of introducing their Report. Thereafter, Professor B.S. Murty and Professor Rahmatullah Khan, who had been specially commissioned by the Secretariat for that purpose, commented upon the Preliminary Report of the Special Rapporteurs. This was followed by interventions, comments and observations by the representatives of 5 Member States and the Under Secretary General in charge of Legal Affairs and the Legal Counsel of the United Nations. Interventions were made by the representatives of the Arab Republic of Egypt; China; India; Somalia and Turkey.

#### **Second Substantive Session**

The second substantive session of the Meeting considered the question of the "International Humanitarian Law and the Laws of War" was chaired by the President of the AALCC Dr. P.S. Rao. The basic working document of this session was a Preliminary Report on "International Humanitarian Law and the Laws of War" prepared for the 1999 Centennial Commemoration of the First Hague Peace Conference by Professor Christopher Greenwood.<sup>5</sup>

To facilitate the consideration of the aforementioned Report and to guide discussions on the issues raised therein Professor (Ms.) Gulnihal Bozkurt, Professor of International Law at the University of Ankara (Turkey) was appointed Moderator. To facilitate the preparation of a Report Mr. Kojo Y. Asuamah (Ghana) was appointed Rapporteur for the Session. Following the introductory remarks by the Moderator presentations were made by Professor B.S. Chimni; Dr. (Ms) Zahra Noparast and the representative of the International Committee for the Red Cross (ICRC), Dr. Umesh Kadam. The presentations related to Professor Christopher Greenwood's Report.

<sup>5</sup> This Report had been circulated by the Secretariat as Document No. AALCC/UNDIL/CFPC/1999/2.

### Third Substantive Session

The third substantive session of the AALCC Meeting to consider the three Preliminary Reports on the Themes of the First International Peace Conference considered the question of "Disarmament and Arms Control since the First Peace Conference" and was chaired by the President of the AALCC Dr. P.S. Rao. The basic working document of this session was a Preliminary Report on "Development of International Law Relating to Disarmament and Arms Control since the First Hague Peace Conference" prepared for the 1999 Centennial Commemoration of the First Hague Peace Conference by Mr. Hans Blix.<sup>6</sup>

To facilitate the consideration of the aforementioned Report and to guide discussions on the issues raised therein Professor Frank Xavier Njenga, former Secretary General of the AALCC and currently Dean Faculty of Law Moi University (Kenya) was appointed Moderator and to facilitate the preparation of a Report Mr. Wael Aboulmagd (Arab Republic of Egypt) was appointed Rapporteur for the Session. Following the introductory remarks by the Moderator presentations were made by Professor V.S. Mani; Dr. Raja Mohan and Mr. K. Subhramanayam. The presentations related to Mr. Hans Blix's Report.

### Fourth Session

The fourth session was chaired by the President of the Committee, Dr. P.S. Rao and presentations of reports were made by the three Rapporteurs on the proceedings of the three preceding session of the AALCC meeting.

#### (i) Peaceful Settlement of Disputes: Prospects in the 21st Century

The Rapporteur of the first substantive session on the question of the "Peaceful Settlement of Disputes; Prospects in

<sup>6</sup> This Report had been circulated by the Secretariat as Document No. AALCC/UNDIL/CFPC/1999/3.

the 21st Century", Mr. S.M. Confiado, said that reference had been made to the evolution of the principle of non-use of force in international law in international relations and to the emergence of the concept of the peaceful settlement of disputes. The adversarial character of the means of the peaceful settlement of disputes, save and except perhaps that of negotiations, was pointed out. The point was made in this regard that barring conciliation following mutual consultations all other means of resolution of disputes were non-zero sum games. One of the Special Rapporteurs, Professor Christopher Pinto, referred to some of the positive aspects of "trial by combat" adversarial procedures of the peaceful settlement of disputes.

The Rapporteur, Mr. S.M. Confiado observed that International law was sometimes authoritative not because it was the law and must prevail. It was stated in this regard that contemporary international law often reflected the will and power of larger States over smaller States. He stated that several specific issues of the settlement of disputes and the prospects of their use in the Twenty-first Century had been considered. The specific points raised in the preliminary report and considered had included Judicial Arbitration; Use of the International Court of Justice; and Alternative Dispute Resolution Mechanisms including the role of regional bodies. As regards the role of regional international organizations a view had been expressed that consideration needed to be given to strengthening the role of regional organizations in the peaceful settlement of disputes. This reference to the role of regional organizations was further elaborated by a proposal that regional courts should be considered to supplement the working and role of the ICJ in the settlement of disputes. This greater use of the regional courts would strengthen the mechanism of peaceful settlement of international disputes.

The Special Rapporteur recalled that questions relating to Alternative Dispute Resolution mechanism including the proposal relating to the establishment of a Permanent Conciliatory Committee (or alternately Permanent mediator Committee) were considered. A view was expressed in this regard that the choice of mode of peaceful settlement of disputes

would largely depend upon the nature of the dispute. It was stated in this regard that experience had shown that territorial disputes had often satisfactorily been resolved by negotiations. In the context of the consideration of establishment of a Permanent Conciliatory Committee, a view was expressed that conciliation was the most popular means of resolution of disputes.

A view was expressed that a dispute needed to be examined in its totality including its root causes. The examination of a dispute from the point of view of the Victim of the dispute was mooted and a view expressed that the resolution of disputes should aim at addressing the very roots of the disputes per se rather than simply seek to offer a theoretical solution. The issue of resolution of problems/disputes stemming from such political bodies as the Security Council needed to be addressed.

A number of specific issues relating to a wider or universal use of the ICJ were raised and a view was expressed that in the examination of this question of a wider use to the court emphasis requires to be shifted from the consideration of mere modification structural aspects of the Court to the modification, amendment and streamlining of the functions and practical aspects of the working of the Court. Consideration was given to the expansion of the competence of the Court and general issues including those relating to role of the Advisory Opinion of Court.

Apropos, the Advisory Opinion of the ICJ a view was expressed that the Court had a positive role to play in the progressive development and codification of international law. Consideration was given to expanding the competence of a large number of organs and specialized agencies of the UN to seek the Advisory Opinion of the Court. While the question of the authority of the Secretary General of the United Nations to seek advisory opinion of the Court appeared to find support, the competence of non-governmental organizations to seek advisory opinions or to appear before the Court in contentious cases was considered but not pressed and no clear affirmation of the

competence of the Non-Governmental Organizations emerged.  
The issue of the acceptance of the jurisdiction of the court was debated and the majority opinion, the Special Rapporteur said, appeared to favour reference of a dispute to the court by mutual consent. The prohibitive financial aspects for the developing countries, or referring a dispute to the court were also considered.

The full text of the Report of the Special Rapporteur of the first session on the Peaceful Settlement of Disputes, Mr. S.M. Confiado, as adopted at the fourth session of the AALCC Meeting to consider the Preliminary Reports on the themes of the first International Peace Conference is annexed to this Chapter.

### (ii) **International Humanitarian Law and the Laws of War**

Presenting the Report of the second session On "International Humanitarian Law And The Laws Of War, the Rapporteur, Mr. Kojo Y. Asuamah, stated that Professor Chimni in his presentation had observed that the key objective of the report of the special Rapporteur, Professor Greenwood, was to conduct a review of the achievements and failures of the 20th Century and to identify problems which remained unresolved and to suggest how such problems might be addressed. The Preliminary Report had concluded that no new laws were required but that existing laws should be made more effective.

Professor Chimni's evaluation of the report identified what he called "the conceptual weaknesses" of the report. In the main, he identified the complete absence of some reference to the application of the relevant norms of International Humanitarian Law and Laws of War to colonized peoples, the failure of the report to show the multicultural roots of the rules of the laws of war and stressed that the laws of war were never intended to legitimize violence but to restrict or regulate the use of violence in the course of war. The Laws of War had culminated in the development of even more destructive weapons in total disregard of humanitarian considerations. He

drew a distinction between the essentially humanitarian concerns which the ICRC promotes through the protection of the rights of individuals in times of war and the humanitarian which is invaded by its non-humanitarian character seeking to legitimize violence and a particular vision of world order.

The Special Rapporteur, Mr. Kojo Y. Asuamah, stated the concern was expressed about the North-South divide which has affected the application of the Laws of War and wonder why some powerful countries should ignore the laws of war as in Vietnam and champion the establishment of tribunals for war crimes in Rwanda and former Yugoslavia whilst opposing the establishment of an International Criminal Court in the interest of refusing the application of international laws of war against its own people.

Attention was drawn to the inadequate examination of the relationships between International Human Rights Law and International Humanitarian Law in the context of internal conflicts (conflicts within States).

Dr. (Ms) Zahra Noparast's presentation essentially dealt with the need for international law to clarify the notion of the right of self-defence which tends to encourage States to resort to the use of force. It was argued that a sanctions regime coupled with a compulsory jurisdiction for the International Court of Justice to enforce compliance would have a restraining influence to those States which wage illegal wars under the guise of the right of self-defence. In this connection, she expressed concern about the International customary definition of the right of self-defence, the vague manner in which the right of self-defence is defined in Article 51 of the Charter and the apparent changes which the concept has undergone. Referring to Prof. Greenwood's report which had stated that the conditions of "necessity" and "proportionality" were requirements for the invocation of the right of self-defence, she argued that it was necessary to have a time frame which would prevent arbitrary action in the use of the right of self-defence.

In his presentation, the Legal Officer of the ICRC Regional Delegation, Mr. Umesh Kadam, stated that the ICRC was in

agreement with the conclusions of the Greenwood Report that no new laws were required and that the effective implementation of existing laws remained the essential challenges today and tomorrow. The ICRC representative emphasized that the terms "International Humanitarian Law" and the "Laws of War" did not reflect different areas of the law but, in effect, referred to the same thing. He referred to Article 51 of the Additional Protocol I which codifies the principle of proportionality and lamented the absence of a reference in the report relating to indiscriminate attacks where in spite of clear identification of military targets, civilians tend to suffer the consequences of such attack.

The Representative of the ICRC also emphasized the importance of discrimination of international humanitarian law as espoused in the Geneva Conventions. The lack of implementation of existing international humanitarian law resulted from the lack of political will of States to fully apply the law and informed the meeting that the Advisory Service of the ICRC was addressing those concerns.

The President of the Committee, Dr. P.S. Rao, stated that he agreed with Prof. Greenwood's emphasis on the protection of human lives in armed conflict as well as the need to concentrate on new techniques for the effective compliance with existing laws.

Several participants suggested the conclusions of the Greenwood report to the effect that there was no need for new laws and stressed the need for the effective enforcement of existing International Humanitarian Law and Laws of War.

A suggestion was made by participants for the creation of an expert body to study the military manuals of armies throughout the world to facilitate the formulation of training programmes for military personnel which guaranteed adequate knowledge of International Humanitarian Law and the Laws of War for compliance in war situations. It was also suggested that dissemination of information on these laws should not be limited to military personnel but also to the general public, in the belief that an enlightened public opinion could positively

affect violations of IHL in times of war. It was recommended that co-operation with ICRC in this regard would promote the objectives of the 50th Anniversary of the Geneva Conventions.

Participants also welcomed the establishment of war-crimes tribunals such as in Rwanda and former Yugoslavia and expressed concern about the delays between the apprehension of criminals, their trial and conviction. In this connection the UN Security Council's power to establish criminal courts as already demonstrated was highlighted.

Finally, the consensus emerged that whether it was International Humanitarian Law or Human Rights Law, the objective to protect human lives and the vulnerable such as women and children in war situations remained the same. Participants also agreed that States should honour their obligations in the implementation of IHL and human rights laws.

The full text of the Report of the Special Rapporteur of the second session on the International Humanitarian Law and Laws of War, Mr. Kojo Y. Asuamah, as adopted at the fourth session of the AALCC Meeting to consider the Preliminary Reports on the themes of the first International Peace Conference is annexed to this chapter.

### **(iii) Development Of International Law Relating To Disarmament And Arms Control Since The First Hague Peace Conference In 1999**

Presenting his report on the consideration of the item Development of International Law relating to Disarmament and Arms Control since the first Hague Peace Conference in 1899, the Rapporteur, Mr. Wael Aboulmagd, stated that the Moderator had observed that the armaments race during the last hundred years had destabilized the world community and that the Report prepared by the Special Rapporteur, Mr. Hans Blix, was succinct and very clear in its historical disposition and its consideration an opportune development.

Professor V.S. Mani in his paper entitled "The International Law of Disarmament: A Centennial Overview" had wondered why the international legal community had stayed away. The Blix Report chiefly focused on issues "concerning arms and disarmament". He however felt that the Report did not aim "to completely cover the issues or to examine all the matters concerning (i) Aims of the First Hague Peace Conference; (ii) Focus on the time after the first Peace Conference; (iii) Realization of the aims of the first Hague Peace Conference regarding disarmament and arms control; and (iv) Common issues; seeking their solution.

The main thrust were on issues pertaining to compliance and verification of arms control and disarmament agreements. Certain deficiencies of the Report were highlighted and evaluated. It was pointed out that (i) most attempts at disarmaments have been tentative and partial with inadequate commitment on the part of States; (ii) the effort towards disarmament is underscored by mutuality of suspicion and distrust; (iii) the move towards disarmament has been a pragmatic step-by-step approach; (iv) efforts towards nuclear disarmament have been discriminatory, especially the NPT regime which focuses on the ban on horizontal proliferation of weapons; (v) a discussion of non-proliferation must encompass issue of oligopolistic regimes like the London Club, Australia Club and the MTCR regime; (vi) the Blix Report had left untouched issues concerning the international transfer of armaments and related materials; (vii) the Report was largely an analysis of the verification and compliance mechanisms prevalent in disarmament agreements; and (viii) the Blix Report did not make an attempt to look into the legality of weapons.

Professor V.S. Mani had concluded, the Special Rapporteur stated, suggesting some items for an agenda towards future disarmament efforts which would include: (i) Ban on nuclear testing coupled with an obligation to negotiate a treaty banning nuclear weapons; (ii) the creation of reciprocal no first use arrangements among nuclear weapon States; (iii) stable non-use guarantees by Nuclear Weapon States to non-nuclear