

4. The Delegate of Japan doubted the appropriateness of the item for consideration by the AALCC. These matters, in his view, were of a political nature and should be dealt with on a bilateral basis or multilaterally among the States concerned.

5. The Observer for Italy while rejecting any obligation of his Government on the basis of international law expressed his Government's readiness to co-operate with the Libyan Government to deal with the problems arising out of the left-over mines.

6. The Secretary-General, while assuring full co-operation of the Secretariat, pointed out that since it lacked technical expertise, it would be necessary to convene an expert group meeting to examine the technical aspects of the problem.

7. At the close of discussions, the AALCC took note of the Memorandum submitted by the Government of the Libyan Arab Jamahiriya and directed the Secretariat to prepare a study on the legal aspects of the issues raised. The AALCC also requested the Government of the Libyan Arab Jamahiriya to extend all necessary assistance to the Secretariat in the preparation of the study.

8. Pursuant to the AALCC's request, the Government of the Libyan Arab Jamahiriya extended an invitation to the Secretary-General to visit Libya for consultations. The Secretary-General nominated the Director in the Secretariat for that purpose. The Director visited Tripoli for five days from 14 to 18 January 1991 and held discussions with the officials of the Ministry of Foreign Affairs and other experts. He also collected some useful documents for the preparation of the study.

9. Subsequently, a study was prepared by the Secretariat and presented to the Thirtieth Session of the AALCC held in Cairo in April 1991. However, it could not be taken up for discussion at that session for lack of time. Consequently, the study was resubmitted to the Thirty-first Session of the AALCC held in Islamabad (Pakistan) in January-February 1992.

Discussions and Decisions taken at the Islamabad Session

10. The *Secretary-General* introducing the Secretariat study entitled "Responsibility and Accountability of the Former Colonial Powers", stated that the item was included in the agenda of the Twenty-ninth Session held in Beijing, following a reference made by the Government of the Libyan Arab Jamahiriya. At that Session, after a brief discussion, it was decided to place the item for further consideration at the Thirtieth Session and the Secretariat was asked to prepare a study on the legal issues related to the item.

Following the recommendations of the Beijing Session, the Secretariat prepared a study which was submitted for consideration at the Cairo Session. The item could not be taken up due to lack of time. It was, however, decided to place it on the agenda of the Thirty-first Session. The Secretariat,

therefore, had not prepared any new study on this item. It had, however, contacted the Libyan Arab Jamahiriya for any additional material to update the report but none was forthcoming. The Study prepared earlier has been reproduced.

The Secretary-General explained briefly the approach followed by the Secretariat in the preparation of its study. When the Secretariat embarked upon the preparation of this study, it was realised that it would be a vast study both in time span and the issues involved. For the time being, it was considered more practical to examine the legal issues raised in the context of the Memorandum submitted by the Libyan Government, particularly concerning the remnants of war. The study is divided into three parts. The first part gives a historical background of the special situation in Libya.

After the end of the Second World War, feeble efforts were made to help the Libyan Government to deal with the problems of remnants of war, particularly the mines. Subsequently, in order to draw the attention of the international community, the Libyan Government took the initiative of raising these issues in international fora such as the United Nations, UNEP, the Non-Aligned Conference, the Islamic Conference, the OAU and the Arab League. This generated some momentum for the consideration of these issues in the United Nations and the UNEP. Unfortunately, this did not last long. In recent times, the Libyan Government has taken significant initiatives at the national level to collect and disseminate the relevant information. This would help reviving the interest of the international community and to formulate an objective approach for the consideration of the issues involved.

The second part contains a general survey of legal developments related to the issues referred to in the Memorandum of the Libyan Government. Many fundamental questions and principles related to the conduct of war have been codified to a great extent by the Hague Regulations of 1907, the four Geneva Conventions of 1949 and the Additional Protocols of 1977. The application of these Rules and Conventions in the context of remnants of war have been examined in the present study. There are several decisions by the national and international judicial institutions which could help supplement the analysis of the application of these laws. However, because of shortage of time, such an analysis could not be done.

He observed that a study of State responsibility was a vast topic. There were variety of circumstances which can give rise to international responsibility. The Secretariat study sketches the history of its codification by the International Law Commission. This historical analysis would facilitate consideration of the relevant issues in the context of the Libyan reference in a proper perspective.

Finally, in Part III, some general observations have been made. The Secretariat intends to prepare a study in the light of the views expressed during this Session if this is the mandate of the Committee. To facilitate such a study which might involve some travel for consultations with relevant institutions, the Secretariat would welcome a generous financial contribution from the Libyan Arab Jamahiriya.

11. The *Delegate of Libyan Arab Jamahiriya* recalled that during the consideration of this item at the Beijing Session, his delegation had made a detailed statement. In order to assist the Secretariat in the preparation of a study on the legal issues involved, his Government had invited an official from the Secretariat to Tripoli. All relevant materials and documents related to this topic were given to him. He said that the study prepared by the Secretariat was in full compliance with their request. In his view, since the matter had been examined in various fora, it would be desirable that the AALCC passed a resolution incorporating the relevant legal principles.

12. The *Delegate of the Democratic People's Republic of Korea* stated that many governments were concerned with similar problems raised during the colonial rule.

13. The *Delegate of Uganda* was of the view that the item was of paramount importance and it was not the first time that it had been raised in an international forum. The Organization of African Unity at its meeting in Nigeria in 1991 had discussed these issues at length. In his view, the basic question was related to illegal deprivation of human rights.

14. The *Delegate of Palestine* recognised that the item was of great importance.

15. The *Delegate of Ghana* expressed the view that the subject was vast in scope. The issues involved were complicated and covered the whole history of mankind set out in those resolutions. He put forward the draft of such a resolution for the consideration of Member States.

16. The *Observer for Italy* recalled the statement of his delegation at the Beijing Session and said that his Government rejected any obligation on the basis of existing rules of international law.

17. The *Delegate of Libya* stated that his Government's relations with the Italian Government were cordial and there were no problems between them. While stressing the need to recognise the right of the colonised countries to receive compensation from the colonial powers, he observed that the issues involved covered many areas such as human rights and State responsibility.

18. The *Delegate of Egypt* considered it essential to promote international co-operation to deal with this matter effectively. With regard to the legal principles, he referred to Nuremberg trial judgement which, in his view, laid down many rules of international law.

19. The *Delegate of Sierra Leone* recognised the importance of the item which has been considered by the United Nations and other international bodies. Since the AALCC was a specialised legal body, it was imperative that it followed a judicious approach. He cautioned against any attempt to draw a conclusion at this stage. In his view, the first step was to demarcate areas and then proceed systematically.

20. After the conclusion of the debate, the following text of resolution was adopted :

RESPONSIBILITY AND ACCOUNTABILITY OF FORMER COLONIAL POWERS

The *Asian-African Legal Consultative Committee* meeting at its 31st Session in Islamabad

Recalling the Charter of the United Nations;

Having considered the report of Secretary-General on the topic;

Recalling the U.N. General Assembly resolution No. 1514 (XV) on the right of self-determination by colonial peoples;

Further recalling the relevant U.N. General Assembly resolutions on the return of the cultural heritage to their rightful owners,

1. *Reaffirms* the right to self-determination of countries and peoples under colonial rule;
2. *Further reaffirms* the right of all peoples formerly under colonial rule to receive compensation for damage suffered as a result of colonial rule;
3. *Calls on* former colonial powers to fully and effectively cooperate with the former colonial people in eliminating the consequences of colonial rule and providing information on those exiled or detained during the colonial era;
4. *Further calls upon* the colonial powers to return to their rightful owners the cultural heritage which was illegally plundered and removed by the colonial powers;
5. *Requests* the Secretary-General to continue his detailed study to enable the AALCC to take a definitive decision on the matter; and
6. *Decides* to inscribe the item on the agenda of its Thirty-second Session.

21. The *Delegate of Japan* expressing his reservations stated that "this subject is of highly political nature, and is not appropriate to be dealt with in a multilateral forum like the AALCC.

- (1) Any bilateral approach is the best means to initiate negotiations to arrive at any viable solution. The same is suggested also by the Secretariat Study on the issue, namely, Doc. No. AALCC/XXXI/ Islamabad/92/12.
- (2) What is mentioned above regarding the position of Japan was expressed clearly at the Beijing Session 1990, when the item was proposed by the representative of Libya and there has been no change thereof since then."

Part - I

The Problem of Remnants of War : Special Situation in Libya

The plight of Libyan people under the Italian colonial regime dates back to 1911 when it began deporting several thousand Libyans to concentration camps in Italian islands and other neighbouring countries. Such deportation on a large scale helped strengthening the hands of the colonial regime and weakening the national resistance which was gaining ground among the Libyans. This process continued unabated for nearly four decades.

With the outbreak of the Second World War, Libya became a theatre of war. From 1940 to 1942, it had to bear the brunt of several military operations from both the Axis and the Allied powers. These military operations involved extensive mine laying and booby traps of all kinds in large areas, of the Libyan territory.

The defeat of Italy by the Allied forces marked the beginning of the process of freedom for Libya from the colonial rule. To begin with, Libya was placed under the Administration of four Powers, namely, France, the UK, the USA and the USSR. Subsequently, a Treaty of Peace with Italy was concluded by the Allied and Associated Powers on 10 February 1947.²

Section IV, Article 23 of the Peace Treaty dealt with the Italian colonies. Italy renounced all rights and titles to the Italian territorial possessions in Africa, i.e., Libya, Eritrea and Italian Somaliland. Further, it was provided that these territories would continue under the Administration of four Powers and they would jointly determine their final disposal. In a Joint Declaration annexed to the Treaty, the USSR, the UK, the USA and France reiterated their intentions concerning these territories and assured that if with respect to any of these territories the Four Powers are unable to agree upon their disposal within one year from the coming into force of the Treaty of Peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it.³

2 The Treaty of Peace was signed at Paris on 10 February 1947 between the USSR, the UK, the USA, China, France, Australia, Belgium, Brazil, Canada, Czechoslovakia, Ethiopia, Greece, India, the Netherlands, New Zealand, Poland, the Ukrainian Soviet Socialist Republic, the Union of South Africa and Yugoslavia referred to as Allied and Associated Powers, of the one part and Italy, of the other part. The Treaty came into force on 15 September 1947.

3 Joint Declaration by the Governments of the Soviet Union, the United Kingdom, the United States of America and France concerning Italian Territorial Possessions in Africa. Annex XI, *U.N. Treaty Series*, Vol. 49, 1950. pp. 214-215.

The Four Powers referred to the General Assembly on 15 September 1948 the question of disposal of former Italian colonies. The General Assembly while considering the matters concerning Libya recommended that it should achieve independence latest by 1 January 1952.

The General Assembly requested the Economic and Social Council, the Specialized Agencies and the Secretary-General of the United Nations to consider extending such technical and financial assistance to Libya as it might request in order to establish a sound basis for economic and social progress.

The General Assembly recognised that Libya as a result of war had suffered extensive damage to private and public property, both movable and immovable, as well as to its system of communications. It stressed that, the existence of those war damages and the necessity of repairing them was one of the major economic and financial problems to be taken into consideration. It requested the Secretary-General to study the problem and submit a report at the Sixth Session of the General Assembly.⁴

In order to prepare the report the Secretary-General appointed an expert who assumed his duties in July 1951. Because of the limited time and inadequacy of records, the expert could make only preliminary conclusions. The report estimated that war damages for the two regions—Tripolitania and Cyrenaica—were approximately 12,500,000 lire. The Second Committee of the General Assembly considered the report at its 189th and 190th meetings on 21 and 22 January 1952.

The Representative of Libya urged that the problem of war damages was of great importance for his country, especially in view of the heavy damage to private and public property. He requested the Secretary-General to furnish Libya a certain number of technical experts to make a full and detailed study of the problem and to help the Government to work out a reconstruction programme.

The General Assembly took up this matter for consideration at its 366th plenary meeting. After a brief discussion, it adopted a resolution urging the Secretary-General and the Agencies participating in the Technical Assistance Board to give sympathetic consideration to the request of the Libyan Government for assistance to the economy, including the repair and reconstruction of damaged property and installations, public and private. Further, it recommended appointment of additional experts, as requested by the Libyan Government, to collect the necessary data and complete the survey of the problem of war damages and make necessary recommendations.⁵

Subsequently, in 1955, 1958, 1960 and 1962 the United Nations discussed the Libyan problem in the context of development assistance requesting

4 General Assembly Resolutions 289(IV) of 21 November 1949 and 387(V) of 17 November 1950.

5 General Assembly Resolution No. 529(V) adopted on 29 January 1952. See also *Yearbook of the United Nations*, 1951, page 276.

various United Nations agencies to provide technical and financial assistance for that purpose.

In the following years, the United Nations did not pay any attention to the problem of left-over mines in the Libyan territory. The Libyan Government, at the national level, constituted a department entrusted with the task of studying this problem. A bilateral Agreement was concluded between Italy and the Libyan Government in 1956. The Agreement provided for financial assistance from Italy for economic reconstruction purposes.⁶

In the wake of the Revolution in 1969, a new government took power in Libya. This marked the beginning of renewed efforts to draw the attention of the international community towards the problem of remnants of war. The issue was first raised in the Non-Aligned forum and subsequently at other fora including the General Assembly of the United Nations.

(i) *The Conference of Ministers of Non-Aligned States (August 1975)*

The Conference of Ministers of Foreign Affairs of the Non-Aligned States, held at Lima (Peru) from 25 to 30 August 1975, noted with deep concern that countries and peoples of the Third World faced important losses of properties and human lives as a result of the colonialist wars and wars that took place on their territories between the colonialist countries. While recognising that the economic development programmes in these countries were hindered by the remnants of these wars and aggressive acts such as the placing of mines, the Ministers regretted the failure of the belligerent States and/or the colonialist powers and/or the aggressors to remove the remnants of their military operations and/or to indicate the position of mines. They requested all States that took military or other aggressive acts to remove the remnants of such acts, i.e. mines, to indicate their position and to offer technical assistance for their removal. Finally, they recognised that it was the right of all countries of the Third World and National Liberation Movements that suffered from these acts to ask for compensation for loss of lives and/or properties.⁷

Subsequently, the fifth summit of the Heads of State or Government of Non-Aligned States held in Colombo in August 1976, endorsed the recommendations made by their Foreign Ministers at Peru. While reaffirming that colonialist States must assume responsibility for material and moral damage from which the latter continue to suffer, the Summit demanded that affected countries be provided with all necessary assistance and information concerning the areas in which mines were placed and the types of those mines, and to support all the efforts made by the affected States to remove these remnants. Finally, it recognised that in order to resolve the problem of war remnants, especially mines, it was

6 The Agreement was concluded in Arabic and Italian languages. No English text is available.

7 Text of the Resolution is reproduced in *The White Book*, published by the Libyan Studies Centre, 1981, page 15.

necessary to convene an international conference on this problem and urged the United Nations to take such an initiative.⁸

(ii) *The Seventh Islamic Conference of Ministers for Foreign Affairs held at Istanbul, 12-15 May 1976*

The Conference recognised that the development of certain developing countries had been impeded and threatened by the remnants of wars, especially mines still present in their fields. While condemning those States who had neglected to remove the remnants of wars, particularly mines, the Conference called upon them to assume responsibility for material and moral damage inflicted upon the affected countries and provide all possible help and information concerning the areas in which mines were placed, including site maps, and the types of mines, in view of their importance in supporting efforts of the affected countries to remove those destructive remnants. Finally, it recommended that concerted measures should be taken by all States to convene an international conference to consider this problem.⁹

At its successive sessions, the Islamic Conference during the consideration of this agenda item reiterated its recommendations in more or less similar terms.

(iii) *OAU and the League of Arab States*

The Organisation of African Unity (OAU) and the League of Arab States have also in their deliberations expressed concern over the problem of remnants of war and extended full support to the various initiatives taken to solve this problem.

(iv) *Consideration by the United Nations and the UNEP*

The recommendations of the Non-Aligned Ministers' Conference found its echo at the Thirtieth Session of the General Assembly, which by its resolution of 9 December 1975 recognised that the development of certain developing countries had been impeded by the material remnants of war, particularly mines which continued to be present in their territories. It considered that the colonialist powers which have neglected to remove those mines to be responsible for any material or moral damage suffered by the countries in which such mines are placed. It called upon those States which created that situation to compensate forthwith the countries in which such mines were placed for any material and moral damage suffered by them as a result thereof and to take prompt measures to give all information on the areas in which such mines had been placed and provide technical assistance for their removal. Lastly, it requested the UNEP to undertake a study of the problem of the material remnants of wars, particularly mines

⁸ *Ibid*, pp. 17-18.

⁹ *Ibid* pp 16-17.

and their effect on the environment, and to submit a report on the subject to the General Assembly at its Thirty-first Session.¹⁰

Following the request made by the General Assembly, the Executive Director of UNEP convened a meeting of an advisory group of experts to assist him in the preparation of such a study. On 9 April 1976, the Governing Council of UNEP by its decision 80(IV) authorised the Executive Director to proceed with the preparation of an appropriate study by seeking information from the Governments and taking into account the relevant work being done in other forums. It requested the Executive Director to consult with Governments regarding the feasibility and desirability of convening an inter-governmental meeting to deal with the environmental problems of material remnants of war and provide assistance in the field of environmental protection to those States, upon request, which are engaged in preparing their own programmes for the elimination of mines in their territories.¹¹

The Executive Director submitted an Interim Report to the General Assembly at its Thirty-first Session in compliance with the request made at the earlier session. The Interim Report stressed the need for obtaining statistical data and other relevant material from the Governments and contemplated preparation of guidelines which could cover both action to remedy the environmental damage caused by existing material remnants of war and ways of reducing such damage resulting from future conflicts.¹²

In its resolution 31/111 of 16 December 1976, the General Assembly took note of the Interim Report and requested the UNEP to complete its study.

The completed study, after approval by the Governing Council of UNEP at its Eighth Session, was submitted to the Thirty-second Session of the General Assembly. At that session the General Assembly took note of the Report and urged the Governments concerned to co-operate with the Executive Director of the UNEP to further promote the work in this area.

For the next five years there was hardly any progress. The Executive Director of UNEP continued his efforts to seek the views and observations of all States.

At its Thirty-seventh Session, the General Assembly while considering this item requested the Secretary-General, in co-operation with the Executive Director of UNEP, to prepare a factual study on the problem of remnants of war, particularly mines, which should include an analysis of the following aspects of the problem :

- “(a) The economic and environmental problems experienced by developing countries affected by remnants of war, the loss of life and property they have suffered, their specific demands in this respect

¹⁰ General Assembly Res. 3435(XXX), adopted on 9 December 1975.

¹¹ UNEP/GC/84 and UNEP/GC/84/Add I.

¹² See General Assembly Document A/31/210.

and the extent to which the responsible States are willing to compensate the affected States and to assist them in solving the problem;

- (b) The legal status of the problem;
- (c) The international co-operation required to solve the problem;
- (d) The role of the United Nations in this regard, including the possibility of convening a conference under the auspices of the United Nations.”¹³

Following the recommendations of the General Assembly, the Executive Director of the UNEP, by his letters dated 15 and 18 April 1982, requested the Governments to provide the relevant information. He also convened a high level expert meeting at Geneva from 25 to 28 July 1983. The expert group dealt with the issues concerning economic, environmental and legal aspects of remnants of war and prepared a study entitled *Explosive remnants of conventional war*. The study besides surveying the various aspects of the problem suggested the areas of international co-operation, including the role of the United Nations. In the concluding part, several recommendations were made for urgent remedial action on the problem of material remnants of war. This study was attached to the Report of the Secretary-General submitted to the General Assembly at its Thirty-eighth Session.¹⁴

At the Thirty-eighth Session, the General Assembly *inter alia* requested the Secretary-General, in co-operation with the Executive Director of the UNEP, to continue to seek the views of States on the recommendations contained in Section VIII of the study annexed to his report submitted at the previous session and report to the General Assembly at its Thirty-ninth Session on the results of his consultations with the States concerned.¹⁵

At the Thirty-ninth Session, the General Assembly regretted that no concrete measures had been taken to solve the problem of remnants of war despite the various resolutions and decisions adopted thereon by it and the UNEP. It reiterated its support for the just demands of the developing countries affected by the planting of mines and the presence of other remnants of war in their territories for compensation and for complete removal of those obstacles by the States that implanted them. It requested the Secretary-General, in co-operation with the UNEP and other organisations of the United Nations system, to collect all information on expertise and available equipment, so as to evaluate, on request, the actual needs of the developing countries affected and to assist those countries in their efforts to detect and clear material remnants of war. While requesting all States to co-operate, it called upon those developed countries directly responsible for the presence of remnants of war to intensify bilateral consultations with

13 General Assembly Resolution 37/215, adopted on 20 December, 1982.

14 General Assembly Doc. A/38/383.

15 General Assembly Resolution 38/162, adopted on 19 December 1983.

the aim of concluding, without undue delay, agreements for the solution of those problems.¹⁶

At its Fortieth Session, the General Assembly once again requested the Secretary-General to continue his efforts with the countries responsible for planting the mines and the affected developing countries in order to ensure the implementation of the relevant resolutions of the General Assembly.¹⁷

Pursuant to aforesaid resolution, the Secretary-General requested all State members and non-members of the United Nations to furnish information in this regard. However, in view of the limited response and the lack of information, the Secretary-General in his report to the Forty-second Session observed that “in these circumstances, the Secretary-General is not in a position to evaluate the actual situation and needs of the developing countries affected.”¹⁸

(v) *Further Initiatives by the Libyan Government*

(a) *Studies by the Libyan Studies Centre*

Apart from raising the issue at various international fora, the Libyan Government has been making relentless efforts at the national level by initiating studies and organising conferences. A significant step in this direction has been the establishment in Tripoli of a Centre for Studies and Researches on the Libyan Struggle against the Italian Invasion (the Libyan Studies Centre).

The Libyan Studies Centre has been instrumental in collecting and disseminating information concerning the losses suffered by the Libyan people during the colonial regime. One of its main functions has been to organise international conferences and exhibitions dealing with the past history of the Libyan Jamahiriya. Besides establishing a permanent exhibition in Tripoli, the Centre organised International Seminars on “Libya – History and Revolution” in Rome in 1981 and “the consequences of war damages and international responsibility” in Geneva in April 1981, respectively. The Centre also brought out *The White Book*;¹⁹ which gives valuable information about the damages suffered by the Libyans and the efforts made by the Libyan Government both at the national and international levels to draw the attention of the international community.

In 1982, the Libyan Studies Centre effected a statistical survey in various municipalities of the Jamahiriya to collect the information on the damages suffered by the Libyan people as a result of colonialism and its residues since 1911. It was contemplated that the survey would cover any type of damage suffered by the Libyan people due to the Italian aggression, which

16 General Assembly Resolution 39/167, adopted on 17 December, 1984.

17 General Assembly Resolution 40/197, adopted on 17 December 1985.

18 General Assembly Doc. A/42/514.

19 *The White Book* was published by the Libyan Studies Centre in 1981.