

States; (iv) ending deployment of short range nuclear weapons; (v) taking nuclear forces off alert; (vi) the removal of nuclear warheads from delivery systems (removal of hair-trigger elements); (vii) control over fissionable material; (viii) ban/restrictions on development/production of new weapons; (ix) ban on first use of existing weapons of mass destruction; and (x) identification, and ban or restriction on the existing means and methods of warfare whose use violates Article 35 of Geneva Protocol I of 1977.

Mr. Subhramanyam felt that the title of the Blix Report "Development of International Law Relating to Disarmament and Arms Control since the First Hague Peace Conference" was misleading as it did not deal at all with the issue of legality of nuclear weapons, which had come up before the ICJ as an Advisory Opinion. In his view, the Blix Report also, did not speak about the 'legitimacy or the legality of the use of nuclear weapons'. A diabolical stand was adopted by the nuclear have, as there existed no obligation for regulation of nuclear weapons, when lesser weapons of mass destruction such as biological and chemical weapons were regulated upon. Furthermore, he felt that the Blix Report was silent on the important issue of nuclear weapon technology.

The most important event not considered by the Blix Report was the indefinite extension of the NPT after the 25 year review in 1995. This act, in his view, had one and for all legitimized nuclear weapons, in all its facets. The chief challenge before international lawyers, he felt, was to evolve ways and means to delegitimize this process.

Another issue, he touched upon related to the violation of a basic norm of the 1969 Vienna Convention relating to Law of Treaties, wherein obligations, arose when a State is a party to a treaty regime. In this regard, he felt the efforts of the Big Five nuclear powers to coerce India to adhere to the CTBT regime, violated the Law of Treaties.

Dr. Raja Mohan felt that although international law regulated the use of force in international relations security

experts often felt international law not germane to their discussions. The element of power prevalent in the international relations, he felt, often transcended the international legal processes. The challenge before international lawyers, he averred, was how to get around this dilemma. Considering the fact that, there was a discriminatory regime which created two sets of laws, one for the have and other for the have nots. The real challenge to international lawyers is to press for a "universal no first use treaty regime". He felt, that the non-State actors, new entrants in the process of disarmament who could play a damaging role, especially after the collapse of the Soviet Union, where one never felt the need for a verification regime.

The Rapporteur, Mr. Wael Aboulmagd, said that the discussions revealed the following strands of thought viz. (a) that there is an urgent need for a genuine universal disarmament regime; (b) that the Hans Blix Report does not cover important aspect - viz. Transfer and trade of nuclear technology; (c) that the strengthening of international law relating to disarmament, could be achieved only if international law is based on reciprocity as unilateralism has been the main stumbling block towards multilateral negotiations in addressing disarmament issues; (d) that given the existence of a treaty regime prohibiting production, use and stockpiling of chemical and biological weapons, speakers questioned the differential approach to nuclear weapons, as both categories were weapons of mass destruction (e) that States should endeavour to have a "no first use treaty regime"; (f) that the extension of NPT regime essentially calls for a de-legitimization of the nuclear weapons proliferation regime; (g) that the Blix Report did not reflect on a number of relevant issues relating to the effects of indefinite extension of NPT, evaluation of NPT regime, relationship between legal instruments created and complete disarmament and lack of future perspectives and direction towards disarmament in the next century.

The full text of the Report of the Special Rapporteur of the third Session on Disarmament and Arms Control since the First Peace Conference, Mr. Wael Aboulmagd, 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.

It needs to be stated that the President Dr. P.S. Rao, requested the representatives of States and other participants to file with the Secretariat of the Committee for written comments, observations, and proposals relating to the issues considered for the enrichment of both the report of the Secretariat and the Report of the special Rapporteurs on the subject.

### Closing Session

The closing session, chaired by the President of the 37th Session of the Committee was largely ceremonial in nature to mark the end of the Meeting to consider the Preliminary Reports on the three themes of the first International Peace Conference. Statements were made by the President, Dr P.S. Rao; the Under Secretary General for Legal Affairs and the Legal Counsel of the United Nations, Mr. Hans Corell; the Secretary General, Mr. Tang Chengyuan; the representative of the Government of Netherlands, Mr L. Buchli; the representative of the Government of Finland; and the representative of the ICRC.

The President requested the Secretary General to prepare a Report of the Meeting and to include therein all written comments that may have been or are received within a forenight of the closure of the meeting. The Report he announced would be submitted to the 38th session of the Committee scheduled to be held at Accra, Ghana, and given due consideration. In fulfillment of that mandate the Secretariat had prepared this Report for consideration at the Committee's session in Accra, Ghana. The printed Report of the Seminar will shortly be brought out by the secretariat which would cover the detailed deliberations, comments, observations and the full texts of the statements made during the four sessions of the two day seminar.

### Annex I

#### REPORT OF THE RAPPORTEUR, MR. S.M. CONFIADO, ON THE PROCEEDINGS OF THE FIRST SESSION OF THE AALCC MEETING TO CONSIDER THE PRELIMINARY REPORTS ON THE THEMES OF THE FIRST INTERNATIONAL PEACE CONFERENCE HELD IN NEW DELHI ON 11TH FEBRUARY 1999

1. 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 Fr. P.S.Rao. The basis 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. This report had been circulated by the Secretariat as Document No. AALCC/UNDIL/CFPC/1991/1.
2. To facilitate the consideration of the aforementioned Report and to guide discussions on the issues raised therein Professor Quizhi He, Legal Adviser, International Law Commission was appointed Moderator. Following the introduction of the Report by two Rapporteurs, Professor F.O. Vicuna and Professor Christopher Pinto, presentations were made by Professor B.S. Murty and Professor Rahmatullah Khan who had been specially commissioned by the Secretariat for that purpose. 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.

3. Reference was 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.

4. Most speakers accepted the thesis that the history of international relations and international law had moved from the Westphalian system, to the Euro-centric paradigm to the contemporary decentralization of international society. Doubts were, however, expressed as to whether the structure and fabric of the society and the set of rules governing the international society had really changed their basic nature. 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.

5. Several specific issues of the settlement of disputes and the prospects of their use in the Twenty-first Century were considered. The specific points raised in the aforementioned preliminary report and considered were Judicial Arbitration; Use of the International Court of Justice; and Alternative Dispute Resolution Mechanism including the role of regional bodies. As regards the role of the regional international organizations a view was 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.

6. One delegate laid emphasis on dispute avoidance and mode of resolution of disputes vis-a-vis avoidance of dispute. The view was expressed that a free exchange of information and harmonious good neighbourly relations could inter alia contribute to the prevention of dispute avoidance.

7. Questions relating to Alternative Dispute Resolution mechanism were also considered. The proposal relating to the establishment of a Permanent Conciliatory Committee (or alternately Permanent mediator Committee) was 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.

8. 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. It should be mentioned in passing that the issue of resolution of problems/disputes stemming from such political bodies as the Security Council needed to be addressed.

9. A number of specific issues relating to a wider or universal use of the ICJ were raised. A view was expressed that in the examination of this question of a wider use of 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.

10. A view was expressed that the Advisory Opinion of ICJ 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. The question of the authority of the Secretary General of the United Nations to seek advisory opinion of the Court appeared to find support.

11. The competence of non-governmental organizations to seek advisory opinions or to appear before the Court in contentious cases was considered but no pressed. No clear affirmation of the competence of the Non-Governmental Organizations emerged.

12. The meeting recognized that the court is seized of a matter and that the Court was not seize a matter. the issue of the acceptance of the jurisdiction of the court was debated. The majority 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 Under Secretary General for Legal Affairs and Legal Counsel of the United Nations invited attention to establishment by the Secretary General of a Voluntary Trust Fund for specific purpose of rendering assistance to developing countries keen to resort to the facilities offered by the court. It was stated that financial assistance would also be extended to those who wished to use the facilities of the Permanent Court of Arbitration.

13. Some delegates referred to the United Nations University and the proposed World School of International Law at the Hague. One proposal advanced was that regional law schools under the UN umbrella be established to supplement the world law school. Although the Meeting considered the proposal for the establishment of a High Level Committee of Jurists, no consensus, however, emerged. It was pointed out in this regard that the developing countries are not adequately represented in such specialized Committees.

14. It needs to be stated that the President of the Committee, Dr. P.S. Rao, requested the representatives of States of file with the Secretariat of the Committee their written comments, observations, and proposals relating to the issues considered for the enrichment of both the report of the Secretariat and the Report of the Special Rapporteurs on the subject.

## ANNEX II

### REPORT OF THE RAPPORTEUR OF THE SECOND SESSION, MR. KOJO Y. ASUAMAH, ON "INTERNATIONAL HUMANITARIAN LAW AND THE LAWS OF WAR", NEW DELHI 11TH FEBRUARY, 1999.

1. The Second Session of the Meeting was called to order at 3.00 by the Moderator Professor (Ms). Gulnihal Bozkurt under the Chairmanship of the President of the Committee, Dr. P.S. Rao, to consider the preliminary report on International Humanitarian Law and the Laws of War prepared by Professor Christopher Greenwood of the London School of Economics, whose absence at the meeting was sorely missed.

2. Presentations were made to the Session by Prof. B.S., Chimni (JNU), Dr. Zahra Noparast (Iran) and Mr. Umesh Kadam (ICRC).

3. In his contribution, Prof. Chimni expressed his gratitude for the opportunity to share his views on the report with the Committee. He stated that the key objective of the report 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 Report, he continued, concluded that no new laws were required but that existing laws should be made more effective.

4. Prof. 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 Laws and Laws of War to colonized peoples, the failure of 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. He also lamented the fact that the Laws of War had culminated in the development of even more