

UNITED NATIONS DECADE OF INTERNATIONAL LAW

(i) Introduction

At the dawn of the next millennium and the end of the decade it may appropriately be recalled that the General Assembly had by its resolution 44/23 declared the Decade of Nineties as the United Nations Decade of International Law. The main objectives of the Decade of International Law were:

- (a) to promote acceptance and respect for the principles of international law;
- (b) to promote methods and means for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;
- (c) to encourage the teaching, study, dissemination and wider appreciation of international law; and
- (d) to encourage the progressive development and codification of international law.

At the 29th Session of the AALCC held at Beijing in 1990, the item was placed on its agenda. It has thereafter been considered at successive sessions of the General Assembly and the AALCC. At the 37th Session of the AALCC (New Delhi, 1998) a note was taken of the proposal advanced by the Governments of Netherlands and the Russian Federation at the 51st Session of the General Assembly which called for the convening of a Third International Peace Conference with a view to consider international law and order in the post-cold war era at the threshold of the twenty-first century. It may be added that the Sixth Committee had recommended that the Assembly include in its provisional agenda an item entitled "1999 Action Dedicated to the Centennial of the First Peace Conference and to the Closing of the United Nations Decade of International Law". This was supported by a large number of AALCC delegates. At this session a view was expressed that the adoption of a Declaration and a Plan of Action would help in furthering the objectives of the Decade in the new millennium. Accordingly, the Secretariat of the AALCC was directed to monitor the developments in this regard.

The Programme of action for the celebration of the Centennial of the First International Peace Conference envisaged three main themes, which were: (i) disarmament; (ii) humanitarian laws and the laws and customs of war; and (iii) the peaceful settlement of disputes. The Third Peace Centennial Conference would look into the legislative and normative aspects of these three themes.

Within the framework of the United Nations Decade of International Law, it may be recalled, the Governments of the Netherlands and the Russian Federation were called upon by the General Assembly to organize and coordinate the Centennial of the First Peace Conference. Accordingly, the co-organizers transmitted three preliminary reports on peaceful settlement of disputes, international humanitarian law and the laws of war and the development of international law relating to disarmament and arms control to the AALCC. It is also important to recall that the co-organizers in their progress report submitted to the 53rd Session of the General Assembly had proposed convening of six meetings to discuss the preliminary reports on the Centennial themes and the AALCC was identified as one of the regional intergovernmental organizations which was to convene a meeting. The reports received from these six meetings were to

be discussed at two expert meetings scheduled to be held in the Hague in May 1999 and at St. Petersburg in June 1999.

As a follow up, the Legal Advisers Meeting of AALCC Member States, held in New York in October 1998 directed the Secretariat to convene an Expert meeting to consider the Preliminary Reports on the Themes of the First International Peace Conference.

Pursuant to that mandate, the Secretariat of the AALCC in collaboration with the Ministry of External Affairs, Government of India, convened a two-day meeting in February 1999 to consider the three Preliminary Reports on the themes of the First International Peace Conference. Presentations were made by a group of experts drawn from both members of the AALCC and non-member States. The working document for the first session was a Report on "The Peaceful Settlement of Disputes: Prospects for the Twenty-first Century", jointly prepared by Professor Francisco O.Vicuna and Professor Christopher Pinto. At the second substantive session, the basic working paper was the Preliminary Report on "International Humanitarian Law and Laws of War" prepared by Professor Greenwood. The working document for the third substantive session was the preliminary report on "Development of International Law Relating to Disarmament and Arms Control since the First Hague Peace Conference", prepared by Mr. Hans Blix. The fourth session saw presentation of reports by the Rapporteurs on the proceedings of the three substantive sessions. The debate in the course of the meeting was informal and no formal conclusions or resolutions were adopted. A Report of AALCC Meeting was thereafter submitted to 38th Session of the AALCC held in Accra in 1999. The Session had directed the Secretariat "to participate in the Centenary Meeting at The Hague in May 1999" and at St. Petersburg in June 1999. It had also directed the Secretariat to monitor the proceedings of this item at the 54th Session of the General Assembly.

Accordingly, Mr. Tang Chegyuan the then Secretary General of the AALCC attended The Hague Expert Meeting and the Secretariat was represented by Mr. Mohammad Reza Dabiri, Deputy Secretary-General, at the St. Petersburg Expert Meeting.

The Secretariat of the AALCC has brought out a printed Report on the two day meeting, entitled "Report of the Seminar on the three Preliminary Reports on the Themes of the First International Peace Conference (New Delhi, 11th and 12th February 1999). This volume contains the texts of Presentations, Statements, Comments made and the Reports of the Special Rapporteurs.

The Report presented by the Governments of Netherlands and the Russian Federation on the Conclusions of the Expert discussions on the three Centennial themes at the Hague, the Netherlands (18-19 May 1999) and St. Petersburg, Russian Federation (22-25 June 1999) is divided into two parts: Part I deals with discussion on the Centennial themes and Part II deals with the conclusions on the Centennial themes. It must be borne in mind that the conclusions of the expert discussions do not "purport to formulate any particular formal position taken nor commit any delegation to a particular point of view". The Report, furthermore, is prepared on a "as-is" basis and does not prejudice the position of any delegation to the Expert Meeting.

Thirty-ninth Session: Discussions

The **Deputy Secretary General** Mr. Mohammad Reza Dabiri, introduced the Secretariat document on this topic and recalled that the item has been on the agenda of the Committee since the 29th Session held in Beijing in 1990. The item had been considered at successive sessions of the Committee.

While welcoming Mr. T. Buchli, The Executive Secretary of the organizing Committee for the centennial of the First International Peace Conference, the Deputy Secretary General stated that the AALCC was identified as one of the regional organizations, to convene a meeting to consider the three preliminary reports on the centennial themes relating to disarmament, international law, humanitarian and peaceful settlement of disputes. Accordingly, a two day meeting to consider the preliminary reports on the three items was held in February 1999, by the AALCC in collaboration with the Ministry of External Affairs. This meeting, he said was an informal one where a number of presentations were made but no formal resolution was adopted. He also brought to the notice of the plenary, that the Secretariat was represented at the Hague and St. Petersburg Meetings and called for discussing the reports of the meetings held on the centennial themes.

The report that was drawn by these two meetings was divided into two parts, one dealing with the discussion on the centennial themes and the other with the conclusion of the centennial themes. The report was produced on a as-is-basis without prejudice to the views of any delegation. The Secretariat document had in detail dealt with the two parts. Concluding his statement he recalled the call of the General Assembly to continue considering the developments in the progress made in the implementation of the purposes of the Decade. The AALCC Member States could express their views and provide policy guidance on the follow up action.

The **observer from the Netherlands** thanked the AALCC for its contributions to the discussions within the framework of the centennial of the first International Peace Conference especially the holding of a two days expert group meeting in February 1999. The Centennial celebrations in his view called for a reevaluation after one hundred years of the achievement in the field of international law, namely the questions of disarmament and arms control, humanitarian law and the laws of war and peaceful settlement of disputes. In his opinion, the outcome of the centennial celebrations should be made operational at the political level. He said that efforts were underway to publish the conclusions of the Centennial themes in the form of a book containing all the preliminary reports and the speeches delivered at The Hague. He also expressed the hope that the Centennial Celebrations format be adopted again to have open minded, multi forum and initial expert oriented discussions to solve problems of the world.

The **Delegate of India** commended the efforts of the governments of Netherlands and Russian Federation for organizing the centennial Conference to commemorate the first International Peace Conference held in 1899 and cautioned that the end of the Decade did not mean the end of the lofty ideals and objectives.

While commending the efforts of the organisers, he felt that the United Nations Charter had stood the test of time and its basic structure should be adhered to. The Charter though a treaty of limited embodiment, provided sufficient framework to tackle disputes.

The Charter in his opinion should not be played down when it does not suit the needs of a particular State or particular dispute. On the contrary, States, must shed their

psychological barriers and recommit to the basic principles of the Charter. Concluding his statement, he once again expressed his government's appreciation to the Russian Federation, the Netherlands and the AALCC for the continued support to the implementation of the objectives of the Decade.

The **Delegate of the Arab Republic of Egypt** commended the efforts of the organizers of the centennial Conference namely Netherlands and the Russian Federation. While appreciating the conclusion of the centennial Conference, he felt that Asian African States should come together to project their views on important matters of international law. AALCC Members States he added must not harp that they were non-players when Eurocentric international law was thrust upon them. Instead they must cooperate to coordinate their actions to be able to play a constructive role.

The **Delegate of Ghana** speaking on the turn of events after the end of the Cold War, felt that there had been an escalation of conflicts within and between States caused by the threat of use of nuclear weapons and small arms. Even as some states call for a universal non proliferation regime regulating nuclear weapons (in all its facets), the need for universal general disarmament was felt more acutely, then ever before. The delegate expressed the view that the Security Council responsible under Article 25 for maintenance of international peace and security was found wanting in its task, often unable to fund and help regional arrangements provided under Article 53 of the Charter.

In the view of his delegation, the AALCC should find out how best to avoid double standards when dealing with regional security problems and also to appeal to states who are pursuing the nuclear path to resort to the mechanisms of peaceful settlement of disputes as set out in the U.N. Charter.

(ii) **Resolution on the "United Nations Decade of International Law"**
(Adopted on 23.2.2000)

The Asian African Legal Consultative Committee at its thirty-ninth session

Mindful of its active role in the fulfilment of the objectives of the Decade, particularly the convening of a two day Expert Group Meeting to consider the three Preliminary Reports on the themes of the first International Peace Conference;

Conscious of the participation of the Secretariat at the two Expert Group Meetings held in the Hague and St. Petersburg in May 1999 and June 1999 respectively;

Having also taken note of the Secretariat brief on the United Nations Decade of International Law as set out in Document No.AALCC/XXXIX/CAIRO/2000/S.6;

Having heard the statement of the Deputy Secretary General;

1. **Notes** with satisfaction the conclusion of the United Nations Decade of International Law;
2. **Reiterates** the importance of strict adherence to the Principles of International Law as enshrined in the Charter of the United Nations;
3. **Urges** Member States to continue promoting the acceptance of and respect for the rules and principles of international law; and
4. **Directs** the Secretariat to continue to report on the progress made in the implementation of the purpose of the Decade.

(iii) Secretariat Study: The United Nations Decade of International Law

The meetings held in the Hague considered the legislative and normative aspects of the centennial themes, contained in the reports conceived and revised by the rapporteur: Francisco O Vicuna and Christopher Pinto on Peaceful Settlement of Disputes. Christopher Greenwood on Humanitarian Law and the Laws of War and Hans Blix on Disarmament question.

At the opening session delegates heard speeches by Secretary-General of the United Nations, Kofi Annan; the Minister of Foreign Affairs of the Kingdom of Netherlands, Jozies van Aartsen; the former Minister of Foreign Affairs of the Kingdom of Netherlands, Chairman of the Organizing Committee, Hans van Mierlo; the President of the International Committee of the Red Cross (ICRC), Cornelio Sommaruga; the Director General of the Organization for the Prohibition of Chemical Weapons (OPCW), Jose Busteni; the Under Secretary General for Legal Affairs and Legal Counsel of the United Nations, Hans Corell; the President of the International Federation of Red Cross and Red Crescent Societies (IFRC), Astrid Heiberg; and the Secretary General of the Permanent Court of Arbitration (PCA), Hans Jonkman. These interventions largely dwelt on the need for an international order based on the rule of law.

It may be noted that from 22 to 25 June 1999 delegates, observer States and international organizations assembled at the Smolny Palace in ST. Petersburg, Russian Federation to continue the expert discussions and consider the implementation aspects of the centennial themes.

The opening session heard a message by the President of the Russian Federation, Boris N. Yeltsin, wherein he stressed that on the eve of the 21st century, the main task was to ensure strict compliance with international law, and in particular with the Charter of the United Nations. The prominent speakers were the Secretary General of the United Nations, Kofi Annan; the Governor of St. Petersburg, Vladimir A. Yakovlev; the Deputy Minister of Foreign Affairs of Russian Federation, Serguey A. Ordzhonikidze; the Chairman of the Organizing Committee of the Centennial Meeting in the Hague, Hans van Mierlo, the Vice President of the ICRC, Pierre Kuller; the Deputy Secretary General of the Permanent Court of Arbitration, Phyllus Hamilton and the Vice President of the International Federation of Red Cross and Red Crescent Societies, Ludmila G. Potranova. These interventions called upon States to strengthen international law by complying with the existing rules of international law. This in their view was a *sine qua non* for maintaining peace, security, preventing and suppressing violations of norms of international law and safeguarding human rights.

Summary of some of the Conclusions of the Centennial Themes

A. Disarmament Questions

The expert discussions on the legislative and normative aspects of disarmament questions had under consideration the revised report by Dr. Hans Blix. Delegates identified the following elements and expressed these views.

(i) International Context

Views were expressed that though the end of the Cold War had signalled some disarmament and arms control measures, the euphoria was short lived as the progress to reduce armaments had slowed down with increasing defence expenditure.

(ii) International Law and United Nations

Delegates were of the view that disarmament efforts were by and large conducted in a fragmented way, due to which international law has been unable to play an important role. Suggestions were also made that there should be coordination of discussions on the international legal aspects and security matters in the Sixth Committee of the United Nations.

Many participants expressed the view that the legitimacy of international actions should be decided by the United Nations and it must be strengthened to enable it to act on behalf of the international community, when violations of disarmament agreements take place. This in their opinion could be done by reducing the use of the veto and granting a greater role to regional organizations in matters of security.

As regards regional security organizations, views were expressed that greater emphasis should be placed on the role of regional security arrangements as envisaged under Chapter VIII of the Charter of the United Nations.

(iii) Nuclear Disarmament

Delegates felt the need for achieving further progress in nuclear disarmament, particularly the implementation of Article VI of the Nuclear Non-Proliferation Treaty. Others suggested that the Conference on Disarmament should start work within a special sub-committee, aimed at nuclear disarmament. While some delegates opined that disarmament should take place on a time bound framework, others were of the view that a step by step approach to nuclear disarmament was the only viable approach.

Other views expressed called for: (a) rejection of the principle of nuclear deterrence; (b) entry into force of the Comprehensive Test Ban Treaty (CTBT) as an important step towards non-proliferation; (c) urgent need for start of substantive negotiations within the Conference on Disarmament on a Fissile Material Cut Off Treaty (FMCT); and (d) transfer of technology and funds for peaceful purposes to developing countries.

A suggestion was also made to undertake a study to keep nuclear weapons free zones, free from weapons of mass destruction especially sensitive areas like the Middle East and South Asia. In this regard, a call was made for requesting nuclear weapon States to support such endeavors.

(iv) Anti Ballistic Missiles

Delegates expressed the view that missile technology must be controlled and regulated upon. Recalling that the Anti Ballistic Missile Treaty (ABM) 1972 had stood the test of time by establishing strategic stability and peace in the cold war era they expressed serious concern that the ongoing Theatre Missile Defense Programme could, however, jeopardize the viability of this treaty.

(v) Biological and Chemical Weapons

Many delegates expressed the view that an effective Protocol regarding the verification of the Biological and Toxic Weapons Convention (BTWC) needed to be

completed. Similarly, the verification measures envisaged under the Chemical Weapons Convention (CWC) must be effectively implemented.

A view was expressed that the BTWC and the CWC should reflect the sacrifices made by the developing world and hence negotiations towards adopting an affective regime should not be weakened by giving into the stakes of biotechnical industries lobby.

(vi) Small Arms

Views were expressed that small arms had been responsible for most serious casualties in the Asian and African region. Solutions to the problem were suggested wherein the scope of the UN weapons register is expanded to include small arms and greater attention was paid by the international community towards the illegal trafficking of weapons.

As regards conventional weapons, delegates felt that the development of new weapons should be in conformity with international humanitarian law. A view was expressed stressing the need for ratification of the Protocol to the Conventional Weapons Convention.

(vii) Conference on Disarmament (CD)

Delegates were of the opinion that the CD was an important body in the process of multilateral disarmament. While commending the work of the CD in concluding the Chemical Weapons Convention and the Comprehensive Test Ban Treaty suggestions were made for revising the working procedures of the organization.

(viii) Verification Mechanisms

Views were expressed calling for an exchange of experience between various control mechanisms of the existing and future multilateral legal instruments in the field of non-proliferation and disarmament, *inter alia*, NPT, CTBT, CWC, BTWC. Delegates also expressed concern to the cost effectiveness and the control techniques involved. They felt that verification and compliance are essential for confidence building measures in achieving progress towards disarmament.

B. Humanitarian Law and Laws of War

The expert discussion on humanitarian law and laws of war considered the revised report by Prof. Christopher Greenwood. The session noted with approval the recent adoption of a new Protocol to the Hague Convention Cultural Property 1954, Ottawa Landmines Convention 1997 and the Rome Statute of the International Criminal Court 1998. Further, the delegates identified the following elements and drew up conclusions on the same.

(i) *Jus in belli - jus ad bellum*

Delegates expressed the view that acts of war must not only be in conformity with the relevant rules of the laws of armed conflict, but they also must be necessary and proportionate to the achievements of the objectives permitted under international law. As regards use of force, there were divergent views with delegates repeatedly referring to UN Charter provisions as the sole basis for the use of force. Despite these differences, most of the delegates agreed that the use of force must meet the tests of necessity and proportionality.

(ii) Belligerent Occupation

A view was expressed that though the law of belligerent occupation, as elaborated in the 1899 (1907) Hague Regulation on Land Warfare, the fourth Geneva Convention of 1949 and Additional Protocol I of 1977, be regarded as a sufficient basis to adopt to changing circumstances, the belligerent powers must ensure that in the event of prolonged occupation, that they do not exploit the occupied territories for the benefit of their own population.

(iii) UN Military Operations

The session witnessed a prolonged discussion on the law applicable to UN Military operations and responsibility for acts of UN forces. Delegates also expressed the view that the rules of international humanitarian law be reconsidered to ensure better compliance by UN forces.

(iv) Internal Armed Conflicts

Delegates agreed that rules of international humanitarian law applicable in internal armed conflicts bind the government and other parties. Views were also expressed, calling unwarranted, the granting of a higher threshold of application to Additional Protocol II of 1977 that Article 3 common to the Geneva Conventions of 1949. Moreover, to enhance the protection afforded to those not taking part in hostilities in situation of internal armed conflict, delegates felt that the international community should take steps to: (i) set the threshold for the application of Protocol II at the same level as presently applied under the terms of common Article 3; (ii) recognize the relationship between the law of internal armed conflict and the law of human rights, by identifying applicable common standards.

(v) Compliance

As regards compliance with the law of armed conflict, views were expressed that the same needs to be improved by measures to be taken in times of peace, preventive measures to be taken in armed conflict and measures at national and international level to suppress violations of international humanitarian law.

Towards this end, delegates felt that compliance with international humanitarian law could be enhanced by: education and training designed to create a "culture of compliance" with international humanitarian laws; establishment of mechanisms for handling POW and civilian detainees; and adoption of legislative and administrative mechanisms necessary to enable States to comply with their obligations and prosecute and punish grave breaches of the Geneva Conventions and Protocols.

C. Peaceful Settlement of Disputes

The expert discussions on peaceful settlement of disputes had under consideration the revised report by Prof. Francisco Vicuna and Dr. Christopher Pinto. During the course of discussions some elements were identified keeping in mind a legislative and normative perspective. The following were amongst the most important elements.

(i) Prevention and Resolution

Views were expressed that utmost efforts must be made for dispute avoidance or prevention of disputes wherein such methods should be institutionalized. It was also

emphasized that matters of peace and security could not be solved by techniques to dispute resolution, but by direct adherence to the principles of non-use of force and sovereign equality of States.

(ii) Negotiations and Consultations

It was stressed that negotiation and consultation were still the most effective methods of dispute resolutions and States must continue to seek peaceful solutions of disputes, even after the breakdown of negotiations. Moreover, third party intervention does not prevent negotiations continuing simultaneously.

(iii) International Court of Justice

Universal acceptance of the compulsory jurisdiction of the International Court of Justice was perceived as a long-term goal. Views were also expressed for increasing the resources of the Court.

(iv) Role of the Security Council and Secretary General

Views were expressed calling for the development of the role of the Security Council and/or of the Secretary General in reducing tension and prevention of disputes. A need was felt for enhancing the role of the Security Council in the maintenance of international peace and security in the context of UN dispute settlement function, by way of fact-finding and other activities. Other opinions expressed for improving the effectiveness of the Council included its expansion and cooperation amongst its members before taking appropriate decisions.

AALCC Secretariat Comments

The end of UN Decade of International Law coincides with the end of a millennium. The sponsors of this item on the agenda of the General Assembly envisioned a world order wherein there exists respect for the rule of law, peaceful settlement of disputes, dissemination of international law and its progressive development.

With regard to promotion of the acceptance of and respect for the rule of international law, it is heartening to note that the Decade witnessed the setting up of the two international criminal tribunals, the adoption of the Rome Statute of the International Criminal Court and the Hague Convention on Cultural Property, the Ottawa Landmines Convention and the establishment of the International community, it is important that States adopt a culture of compliance with the established rules of international law.

The United Nations under its Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law has rendered extremely valuable service to the cause of developing countries of Asian and African region. Publications such as the United Nations Treaty Series and the UN Internet services have proved very useful. Despite the constraints of time and the complex legal issues thrown up by contemporary international relations, the important role played by the International Law Commission in the progressive development and codification of international law is worthy of praise.

Though there is a thaw in relations between the super powers in the post cold war era, genuine and universal disarmament efforts have failed to take start. There is an urgent need to apply international law in matters of disarmament, by strengthening the

institutional mechanisms, like the Conference on Disarmament within the framework of the United Nations. It may also be stated that the needs of the Asian African States for peaceful use of nuclear energy should be met by providing unhampered technology and funds. As opposed to weapons of mass destruction, the States of Asia and Africa have witnessed maximum casualties caused by the proliferation of the use of small arms and conventional weapons. It may be suggested that along with the wider acceptance of the Ottawa convention on Landmines, the UN Arms Register be strengthened with emphasis on the development of an international code of conduct setting criteria for export of small arms.

The Charter mandate for pacific settlement of disputes under Chapter VI should be adhered to. Negotiation and consultation still remain the most effective means of dispute settlement. It is seen that there is an increasing tendency wherein Parties prefer dispute avoidance or prevention, to dispute settlement. Though matters relating to peace and security are not within the strict domain of the International Court of Justice, it cannot be denied that the World Court has played an important role in setting norms for dispute resolution. Towards this end, it may be suggested that universal acceptance of the compulsory jurisdiction of the Court would strengthen the role given to the Court in international affairs. Developing countries, it must be emphasized, should get further assistance from its Trust Fund.

Besides judicial settlement, the position of the Secretary General as envisaged in Article 99 of the Charter could be used to deal effectively with areas under tension or conflict situations. Though the Security Council has the primary responsibility of maintenance of peace and security, it may be suggested that decisions of the Council could be reached on the basis of consensual agreement.

Some Legal Advisers at the AALCC Legal Advisers Meeting held in October 1999, had proposed the continuation of the study of the Centennial themes of the UN Decade of International Law by the Secretariat into the twenty first century. It may be suggested that the Member States wishing to express their considered views, accordingly direct the Secretariat for a follow-up action this regard.