Law and Our Rights

LAWFUL OR UNLAWFUL ?

Legal Status of the Governments in Bangladesh

by Ahmed Ziauddin

The Unilateral Declaration of Independence of 26 March 1971, the Proclamation of Independence of 10 April 1971, the Provisional Constitutional Order of 1972 and finally, the Constitution of the People's Republic of Bangladesh of 1972, did not owe their origin of legal validity to any foreign source but received indigenous validity. The people of Bangladesh declared in the Preamble of the Constitution that "We, the people of Bangladesh, having proclaimed our independence on the 26th day of March, 1971....Affirming that it is our sacred duty to safeguard, defend, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh...., do hereby adopt, enact and give to ourselves this Constitution".

EVEN after passage of a quarter of a century, questions still are being raised about the legality of Bangladesh's independence, the government that led the fight against the occupying Pakistani forces and the post liberation government. Such questions are not new to the observers of Bangladesh's evolution.

It has been observed that such questions are usually raised by certain kind of people. First, those who have failed, for ideological or other reasons, yet to reconcile with the notion of Bangladesh. The other group are those who cannot yet cut their umbilical cords off with Pakistan. Yet another group consist of the people, who, for one reason or other, oppose Awami League, and are prepared to assert and stretch arguments to any length to demonstrate illegality, mainly to undermine the party's contribution in the independence of Bangladesh. Fortunately, in terms of numbers, all the three groups combined constitute a minuscule segment of the population. The vast majority, however, questions out of their sincere quest for the history of Bangladesh and to ascertain the exact legal position.

This article intends first to recapitulate the issues involved and then to contextualise the facts in law. However, the process cannot start without analysing the circumstances preceding independence of Bangladesh.

LEGAL STATUS OF YAHYA REGIME (1969-71)

Though the beginning of the end of Pakistan started with its independence on 14 August 1947, because of its geo-political absurdity, the decade of Ayub Khan's reign in power led the country towards inevitable breakdown. Ayub Khan, one of the principal protagonist of Pakistan's downfall, faced country wide opposition and as the movement picked, he wrote a letter to the military chief Yahya Khan on 24 March 1969, where he expressed his decision to resign from the presidency and to hand over control of the country to the armed forces. In his letter Ayub Khan said, "I have come to the conclusion that all civil administration and constitutional authority in the country has become ineffective....I am left with no option but to step aside". Yahya Khan then proclaimed Martial Law and assumed the office of Chief Martial Law Administrator.

Perhaps not surprisingly, the dictator per excellence, did not follow the constitutional provisions, which he himself promulgated in 1962, even while performing his last ritual. The Constitution embodied the provision of President's resignation and laid out the procedure. The National Assembly Speaker to take over from the President. Ayub Khan, instead, left in favour of defence forces chief.

This hand over of power to Yahya Khan and his subsequent declaration of Martial Law came under judicial scrutiny and was found illegal by Pakistan Supreme Court. In Miss Asma Jilani vs. The Government of Punjab [PLD 1972 SC 139], the Judges declared that "It is clear that under the Constitution of 1962, Field Martial Ayub Khan has no power to handover power to anybody....he could resign his office....could also proclaim an emergency....and may be for the present purposes that he could also proclaim Martial Law if the situation was not controllable by the civil administration. It is difficult, however, to appreciate under what authority a Military Commander could proclaim Martial Law."

The Court then announced, "The assumption of power by Aga Mohammad Yahya Khan as Chief Martial Law Administrator and later as President was an act of usurpation, and was illegal and unconstitutional. All the legislative and administrative measures taken by this unauthorised and unconstitutional regime cannot be upheld on the basis of legitimacy, but such laws and measures which are protected by doctrine of necessity, that is to say which were made for the welfare of the nation and for the ordinary orderly administration of the country, can be deemed to be valid".

Thus, Yahya Khan's regime being illegal, various measures including holding of the general election in 1970 had very weak basis. However, as the Judges said, because the election was expected to restore democratic government and intended for the welfare of the nation, that the results of the election and its outcome was lawful.

In this election, Awami League got majority supports of the voters. In the National Assembly, Awami League got 167 out of 313 seats, while in East Pakistan Provincial Assembly, the party secured 298 seats out of 310. Under newly proclaimed electoral law, the Legal Framework Order [LFO] issued on 30 March 1970 by Yahya Khan, the Awami League was to form the next government in Pakistan but that was not to be.

Legal Status of the Governments in Bangladesh

Instead of respecting verdicts of the ballots, Pakistani government opted for bullets and launched full-scale genocidal attacks on 25 March 1971 on the unarmed civilians of East Pakistan. In early morning of 26 March, the Awami League President Sheikh Mujibur Rahman, as the leader of the elected representatives of Pakistan, declared the independence of Bangladesh. The declaration was later formalised on 10 April 1971.

Two facts prompted Sheikh Mujib to unilaterally declare Bangladesh's independence. He came to the conclusion that Yahya Khan will not transfer power to the elected representatives and the final straw was the military crackdown. In Unilateral Declaration of Independence[UDI], Sheikh Mujib referred the attacks of the Pakistani army on the civilian and Bangalee military personnel, and called on the people to join in the resistance movement.

The Proclamation of Independence[POI], that followed Unilateral Declaration of Independence, contained the background and basis of the Declaration. It embodied all legal, political and other justifications for such a move. Hence, the significance of this Declaration in the context of Bangladesh's constitutional history is enormous.

The Proclamation of Independence re-affirmed the elections held between 7 December 1970 to 17 January 1971, the results thereof and refusal of Yahya Khan to hold Assembly session to pave the way to transfer power to the people. The Proclamation noted that instead of fulfilling promise and "while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war".

Referring ongoing genocide, the Proclamation said, "in the facts and circumstances of such treacherous conduct Bangabandhu Sheikh Mujibur Rahman.......in due fulfilment of the legitimate right of self-determination of the people of Bangladesh, duly made a declaration of independence...on March 26, 1971," which, the elected representatives of the people of Bangladesh, are "honour bound by the mandate given by the people of Bangladesh whose will is supreme.... declare and constitute Bangladesh to be Sovereign People's Republic and thereby confirm the declaration of independence already made by Bangabandhu Sheikh Mujibur Rahman".

The Proclamation then set-up the government, appointed Sheikh Mujibur Rahman, the President of the Republic. The Proclamation empowered the President or in his absence, the vice-president to "do all things that may be necessary to give to the people of Bangladesh orderly and just Government."

Position under municipal law: The Declaration of Independence had dual legality, under municipal and international law. Pakistan, which was established by an Act of British Parliament, the Indian Independence Act 1947, set-up a country with federated units. The concept also was the basis of Pakistan movement expressed in the Lahore Resolution, which articulated two basis of Pakistan: Muslim majority and autonomy of the state. The Resolution in fact perceived more than one independent and sovereign states, which has been differently interpreted. However, there remained no controversy about its autonomous nature.

But the first casualty in independent Pakistan was the autonomy of the federating units. The part of Pakistan where the majority population resided, its eastern wing, was reduced fast to a status of subordination. The eastern wing, considering geographic, ethnic, linguistic, cultural, social, political, economic and administration, became a colony of the western wing. The denial of autonomy and the policy of discrimination practised in every sphere of governmental and public life, provided legal basis of the collective rights.

Finally, when the manifest object to keep the Banglaee people in perpetual subjugation was frustrated in 1970 election, the military administration launched a war of genocide, to destroy substantially the Bangalee people so that the colonial status might be perpetuated.

The genocidal attack on the unarmed civilian, planned and executed efficiently by the Pakistani army, gave the people of Bangladesh individual and collective right of self defence, to organise and fight back. The right of self defence, a natural law right, authorised the victims to deliver proportional response. Also, Article 51 of the United Nations Charter permits use of force in self defence.

In case of Bangladesh, appropriate response included, expelling the foreign troops from the territory and to bring an end of colonial relation. The fight back of the Mukti Bahini and other structured and non-structured resistance, thus, was based on well known principles of law.

The use of force for exercising right of self determination was not permissible per se under international law. In Bangladesh, prior illegal use of force unleashing genocide by the Pakistanis, in turn legalised the resort to force. Thus, the use of force by the people of Bangladesh was justified against the government of Pakistan which first attempted to deny collective will of the people, democratic norms, rights of self determination and to establish equal rights.

Position under international law: The Declaration of Bangladesh's independence was very much within the norms of international law. The format was legal too. The unilateral declaration has been accepted as a legal mechanism to claim statehood, which has been recognised both by the international community and UN.

In the history international law, there are many instances of Unilateral Declaration of Independence. In 1581 by an Act, Dutch Republic seceded from Spain. Portugal unilaterally declared its independence in 1641, in 1776 on 4 July, USA declared independence. Likewise Brazil separated from Portugal in 1822, Belgium from Netherlands and Greece from Turkey in 1830. Cuba declared independence in 1898. In 1903 Panama declared independence from Columbia. In 1912 Tibet proclaimed independence. In 1916 the Irish Republic declared independence from the UK. Laos, Cambodia and Vietnam made unilateral declarations of independence in 1940 from France.

The United Nations, only in one instance, came out and expressly outlawed such an Unilateral Declaration of Independence, when, in 1961, the racist minority white government of Rhodesia, declared unilateral independence from Britain. The United Nations found the Unilateral Declaration of Independence illegal because the declaration did not have the support of the majority black population. Blacks had no civil or political rights nor they were in any way associated with the decision of the declaration either directly or indirectly, whereas in case Bangladesh, the people were with the leaders all the way.

The most important principle under international law, which endorsed the independence of Bangladesh, was itself referred in Declaration of Independence, the right of self-determination. This principle, along with principle of equal rights, are mentioned in the UN Charter in its Preamble, Articles 1(2), 13(1)(b), 55, 56,59, 62(2), 68 and 76(c). These articles encompass inherent right of all people freely to determine their political status, and to decide their economic, social and cultural destinies.

As a colony within the framework of Pakistan, the people of Bangladesh, who constituted a nation because of shared common historical traditions, living within an identifiable community, having a common language and homogeneous feelings, had already acquired international legal personality, which the Declaration merely confirmed.

The United Nations Declaration on Granting of Independence to Colonial Countries, General assembly Resolution no 1514 (XV) of 14 December 1960; the General Assembly Resolution 2200 (XXI) of 16 December 1966 approving the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, the Proclamation of Tehran of 1968 by the United Nations Conference on Human Rights; all provided legal foundation of Bangladesh's independence.

In addition to discrimination and subjugation, Pakistan set up race oriented colonial administration, in a so-called independent country. Racial chauvinism had been the motivating factor for the policy of discrimination, which went straight against the Declaration on the Elimination of all Forms of Racial Discrimination, General Assembly Resolution 1904 (XVIII) of 20 November 1963 and the Convention on the Elimination of Racial Discrimination of 1966.

Guilty on all counts: There were no less than 20 counts of international legal norms which Pakistan violated in 1971. The plan and conspiracy to eliminate a substantial portion of Bangalee population violated Article III(B) of Genocide Convention. The Killing of the millions constituted crime of genocide under Article II(A). Indiscriminate air attacks and random bombing on civilians violated Article 25 of the Hague Convention and General Assembly Resolution 2675 (XXV) of 9 December 1970. The extensive devastation caused by indiscriminate attacks contravened Articles 25, 46 and 56 of the Hague Convention and Article 53 of the Geneva Convention of 1949 relating to civilians.

Further, the cruelty and torturous method adopted by the Pakistani army and their collaborators amounted to crimes against humanity within the ambit of Article 3(1)(a) of the Geneva Convention of 1949 and Article II(B) of the Genocide Convention. Large number of rapes and other gender related offences went against Article 46 of the Hague Convention. Article 3(1)(a) of the Geneva Convention of 1949 prohibiting violence to life and person, cruel treatment and torture; Article 3(1)(c) of Geneva Convention prohibiting outrages upon personal dignity, in particular humiliating and degrading treatment; Article 27 of the Geneva Convention providing that women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution and any form of indecent assault.

Persecution and extermination of the minorities impugned Article 46 of Hague Convention and as genocidal acts, violated Article II(A), (B), (C), and (D) of the Genocide Convention; and the humanitarian principle in Article I(b) of the Convention of 1968. The use of chemical and incendiary bombs contravened Geneva Protocol of 17 June 1925 and the General Assembly Resolution no 2603A(XXIV) of 16 December 1969.

Systematic pillage of moveable properties of civilians from private residences and shops came under Article 47 of the Hague Convention. Confiscation, expropriation of properties and other assets violated Article 46 of the Hague Convention. Article 3(2) of Geneva Convention was breached when Pakistani military did not take proper care to the wounded and sick, instead left them to die. Pakistanis violated customary rule of international law under Articles 15 and 17 of the Geneva Convention of 1949 that dead bodies shall not be mutilated, the Pakistanis dumped the dead bodies in mass graves, or poured petrol and set them alight.

Articles 25, 46 and 56 of the Hague Convention demanded respect for religion and places of worship, which Pakistanis violated with impunity. Numerous people who were arrested and detained in camps and mistreatment meted out, contravened the Geneva Convention of 1949, General Assembly Resolution 2676(XXV) and 2677(XXV) of 9 December 1970.

The above and other violations of international legal norms by the Pakistani army provided the legal basis of the establishment of a separate legal entity, Bangladesh.

Autochthony: Bangladesh's Unilateral Declaration of Independence and subsequent constitutional instruments derive validity from relatively less familiar but well established principle of law; autochthony. Autochthony in its most common acceptance is the characteristic of a constitution which has been freed from any trace of subordination to and any link with the original authority of Parliament of the foreign power that made it. The aim is to give to a constitutional instrument the force of law through its native authority.

The principle needs further elaboration in view of its less public exposure. In fact, India and Pakistan can provide an example.

When India and Pakistan was granted independence by a law of British Parliament, the Indian Independence Act of 1947, it was arranged that the two countries, pending the drawing up of new constitutions, continue to be governed under the Government of India Act 1935. Thus, India and Pakistan was governed under a constitution which owed its force of law to the Westminster parliament of United Kingdom, until 26 January 1950 and 29 February 1956 when new constitutions came into effect in India and Pakistan respectively.

However, though both the constitutions were drawn in the name of the people, both followed different routes of validity. When the crucial question of authentication came, Pakistan Supreme Court in *Federation of Pakistan v. Moulvi Tamizuddin Khan (P.L.D.1955 F.C.240)* earlier decided that an Act of the Constituent Assembly was invalid if it had not received the assent of the Governor General, appointed under two Acts of British Parliament. Pakistanis maintained the legal link with United Kingdom.

India, on the other hand, deliberately decided to break the legal link and to ensure that the Constitution owe its legal origin in India, instead in United Kingdom, passed the Constitution and put into operation in January 1950 without having received the Governor General's assent. So, the Indian Constitution would be autochthonous for want of assent, which would imply clear break with the parent legislation.

The Unilateral Declaration of Independence of 26 March 1971, the Proclamation of Independence of 10 April 1971, the Provisional Constitutional Order of 1972 and finally, the Constitution of the People's Republic of Bangladesh of 1972, did not owe their origin of legal validity to any foreign source but received indigenous validity. The people of Bangladesh declared in the Preamble of the Constitution that "We, the people of Bangladesh, having proclaimed our independence on the 26th day of March, 1971.... Affirming that it is our sacred duty to safeguard, defend, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh....., do hereby adopt, enact and give to ourselves this Constitution".

The author is a researcher at Brussels Catholic University. This essay is dedicated to Mr.Justice Zakir Ahmed, Judge, High Court Division of Supreme Court of Bangladesh, who died of cancer on 17 July 1998.

In his next piece on 'Legal status of the Governments in Bangladesh', the writer continues with post liberation governments.

Creating a People-friendly Legal System

Judicial Case Management: The American Experience

by Dward A Infante

The practice of judicial case management has spread to most state courts. Today, trial judges throughout the United States are actively managing civil cases from filing through disposition with a purpose of achieving the "just, speedy, and inexpensive determination of every action." (Rule 1, Federal Rules of Civil Procedure.)

DURING the past twenty-five years, the civil caseload in the federal trial courts in the United States of America has increased dramatically with case filings rising to triple the number that existed in the early 1970s. Moreover, civil cases have become more complex and protracted with multiple parties, numerous factual issues, voluminous documents, and complicated legal issues. The explosive growth in civil litigation is due in part to population growth, the enactment of new federal statutes creating more rights and remedies, the expansion of commerce and business opportunities, a greater public reliance on the courts to find solutions to a variety of societal problems, and a large increase in the number of attorneys.

Although more judges and courtrooms have been added, the modest increase in judicial resources has not kept pace with the massive expansion of litigation. The result has been court congestion, increased costs, and excessive delay in the resolution of civil cases. Widespread concern among all segments of the legal community as well as the public led to the search for solutions designed to eliminate unnecessary expense and delay in civil litigation.

In the federal courts, prevailing response was twofold: (1) the creation and expansion of less costly alternative dispute methods such as mediation, arbitration, and judicial settlement conferences; and (2) active judicial case management of each civil case.

Traditionally, the role of trial judges has been viewed primarily as presiding over trials, hearing and evaluating evidence, finding facts, applying the appropriate legal standards, making judgments, and dispensing justice. During the pretrial phase of civil cases, most judges assumed a passive role allowing the lawyers to control the progress and pace of the litigation.

Over the past two decades, the trial judge has emerged from a passive pretrial role to an active case manager in an effort to conduct the business of the courts with greater judicial efficiency. This transition has occurred contemporaneously with rule changes and legislation. Utilising its rulemaking authority, the federal judiciary amended the Federal Rules of Procedure in 1983 to expressly provide for early judicial intervention in civil cases and authorising judges to require attorneys and litigants to attend pretrial conferences and enter case management and scheduling orders setting time limits for the progression of the case including a firm trial date. [See Rule 16, Federal Rules of Civil Procedure.]

In addition, the United States Congress enacted the Civil Justice Reform Act of 1990 requiring each United States District Court to develop and implement a "civil justice expense and delay reduction plan." The legislation instructed each court to formulate a case management programme providing for "early and ongoing control of the pretrial process through involvement of a judicial officer" whose responsibilities include "assessing and planning the progress of a case" and "setting early, firm, trial dates."

The practice of judicial case management has spread to most state courts. Today, trial judges throughout the United States are actively managing civil cases from filing through disposition with a purpose of achieving the "just, speedy, and inexpensive determination of every action." (Rule 1, Federal Rules of Civil Procedure.)

Elements of Judicial Case Management

The basic concept behind case management is for early judicial involvement in identifying the principal factual and legal issues in dispute between the parties, and working with them and their attorneys to plan for and manage the conduct of future proceedings to achieve the earliest and most cost effective resolution of the dispute. The current process of case management in the federal courts requires that upon the filing of a lawsuit, an initial Case Management Conference is scheduled within 120 days before the assigned judge.

In preparation for the conference, the attorneys for the parties are required to meet to discuss the nature and basis of their claims and defenses and the prospects for a prompt settlement or resolution of the case. They are required by rule: (1) to exchange specified information relevant to the claims and defenses, such as the names of witnesses, documentary evidence, and computations of damages; (2) to develop a discovery plan for further exchange of evidence; (3) discuss alternative dispute methods (other than trial) which may be useful in resolving the case; and (4) discuss dates for all future proceedings including trial.

After the meeting of counsel, they are required to file a Case Management report prior to the Case Management Conference. At the Case Management Conference the trial judge imposes deadlines that limit the time in which the parties can: (a) amend the pleadings and add other parties; (b) provide disclosures required by the rules; (c) complete discovery; and (d) file pretrial motions. A date for a final pretrial conference and a date for the trial will also be set as part of a comprehensive scheduling order.

One of the goals of case management process is to structure pretrial proceedings of a particular case in a manner that promotes the early exchange of information on key issues, so that the parties will be in a better position to evaluate their claims and defenses and achieve an early settlement of the lawsuit. In those cases where an early settlement is not possible, the court can employ other management techniques designed to eliminate frivolous issues and streamline the case so that it may proceed to trial efficiently, solely on genuine issues of material fact.

The utilisation of case management tools are tailored to meet the needs of the individual case depending upon its simplicity or complexity. Among the case management techniques being utilised by US federal trial courts are the following:

- *Assigning the case at the outset to a court-sponsored Alternative Dispute Resolution Programme, such as Mediation or Arbitration.*
- *Ordering the disclosure or discovery of information on particular factual issues.*
- *Inviting the parties to file written motions with a view to eliminating or narrowing the disputed issues of fact to be tried.*
- *Imposing quantitative limits on discovery or on the number of witnesses to save costs.*
- *Determining the order in which the factual or legal issues will be presented at trial.*
- *Requesting the parties to stipulate or agree to certain issues that appear undisputed, and to the admission of documentary evidence.*
- *Consolidating several cases which involve common issues into one case for pretrial discovery and trial.*
- *Scheduling multiple periodic case management conferences to monitor the pretrial process and discuss settlement.*

To enable courts to enforce its case management orders, the Federal Rules [Rule 16] empower judges to prescribe sanctions or penalties for failing to comply with disclosure or discovery obligations, failing to appear at pretrial conferences, or failure to participate in good faith in case management. Sanctions may include: (i) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters; (ii) an order striking out pleadings or parts thereof, or staying further proceeding until the order is obeyed, or dismissing the action or proceeding or any part thereof; and (iii) an order requiring the offending party to pay reasonable expenses, including attorney's fees, caused by the offending behavior.

The practice of active judicial case management in combination with the utilisation of alternative dispute resolution programmes has substantially reduced excessive litigation costs and undue delay in the resolution of civil cases in the federal trial courts in the United States. Ninety-five per cent (95%) of civil cases are resolved without trial. While some cases are disposed of by dismissal or summary judgement under the Federal Rules of Procedure, most of the cases are resolved by settlement. Effective case management tailored to each particular case enables the parties to evaluate their positions sooner and less expensively. The average time from filing to disposition in most federal district courts has been reduced to seven (7) months. Without active judicial case management, the courts would be hampered in achieving the just, efficient, and inexpensive resolution of civil disputes.

The writer is a Magistrate Judge of United States of America.

URGENT APPEAL

Towards A Nuclear Arms-free South Asia

We urge the SAARC summit to exhort India and Pakistan to resume bilateral co-operation in trade and investment, technological and cultural exchanges and tourism. The growth of regional co-operation demands a conflict free South Asia. Normalisation of India and Pakistan relations is essential if the very first objective of the SAARC chapter is to be achieved — "the welfare of the peoples of South Asia and to improve their quality of life".

WE, the peoples of South Asia are dismayed and alarmed at the Indian and Pakistan nuclear tests of May 1998. The decision of the two traditional rivals, India and Pakistan, to build and deploy nuclear weapons has put at risk the survival of not only the peoples of India and Pakistan, but also the peoples of all the countries of South Asia. We believe that nuclearisation of the subcontinent is a betrayal of the sacred trust of the peoples reposed in their governments. There can be no justification either for the initial nuclear test by India or the retaliatory tests by Pakistan. No amount of provocation or perceived threat legitimises the development, testing, proliferation or use of nuclear weapons. Nuclear weapons are immoral weapons of mass destruction. It is a crime against humanity even to consider the use of nuclear weapons as an option.

The theory of deterrence based on the logic of Mutually Assured Destruction (MAD) has been shown to be highly unstable and accident-prone. During the cold war years, the world was brought to the brink of an 'accidental' nuclear holocaust on nearly 800 occasions. In the case of India and Pakistan, the nuclear balance will be fraught with even greater risk, as the travel time for a nuclear tipped missile is less than three minutes as against about 40 minutes in the erstwhile US-Soviet nuclear face off. Moreover, the history of animosity between India and Pakistan give us little reason for comfort. The two countries have fought three wars during the last fifty years. Two of these wars were over the possession of the territory of the former princely state of Jammu and Kashmir. Even today they are engaged in a low intensity war over Kashmir.

Since the nuclear tests, there has been an alarming rise in jingoism and sabre rattling on both sides. It threatens to push back India-Pakistan relations to the dark days of mistrust and mutual hostility. During the last few years the common peoples of India and Pakistan had been encouraged by non-governmental initiatives which had taken the courageous step to go against official hostility and advocate peaceful solution of all conflicts through dialogue. The people of India and Pakistan dared to look forward to peaceful relations. But the nuclear tests have resulted in a major setback to the official dialogue, which was resumed after a gap of four years in 1997. It has also meant a major setback to building of bridges through people to people contacts.

The animosity between Pakistan and India has been the main cause of tension in South Asia. It is their rivalry which created hurdles in the path of the growth of economic, cultural, scientific and technological cooperation in the South Asian region. The internal tensions generated by their rivalry and its corollary — the militarisation of politics of Pakistan-India, has had a spill over effect on the region. The Indo-Pak arms race has not only affected the economy of both the countries, it has held back the development and growth of the entire region.

The nuclear arms race will bring even greater misery to the common peoples of the region. The hungry, shelterless, illiterate, sick, jobless, poverty stricken and the disempowered teeming millions, who are the silent suffering majority in South Asia, can not and do not perceive the acquisition of nuclear power as the means towards security, self respect, status and power-economic and political.

We, the concerned peoples of South Asia, call upon the heads of governments meeting in Colombo, to demonstrate the necessary statesmanship to assure the future of a fifth of humanity, now threatened with nuclear annihilation.

We urge the SAARC summit in Colombo to put moral pressure on India and Pakistan to immediately sign a bilateral treaty of peace enshrining the principles of non-aggression; no first use of nuclear weapons and abjuring the use of force in settling bilateral difference.

We ask the SAARC summit to persuade India and Pakistan to seriously set about resolving the Kashmir dispute in consultation with the entire population in Jammu and Kashmir.

We urge the SAARC summit to exhort India and Pakistan to resume bilateral co-operation in trade and investment, technological and cultural exchanges and tourism. The growth of regional co-operation demands a conflict free South Asia. Normalisation of India and Pakistan relations is essential if the very first objective of the SAARC chapter is to be achieved — "the welfare of the peoples of South Asia and to improve their quality of life".

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