(b) Elements of A Legal Instrument on Friendly and Good-Neighbourly Relations between States of Africa and the Asia-Pacific Region : Report of the Special Rapporteur.

Introduction

The Meeting of the Heads of Delegations at the 25th Session of the AALCC held in Arusha (Tanzania) in February 1986 had considered on the proposal of the Government of the Mongolian People's Republic the question of inscription of an item entitled "Elements of a Legal Instrument on Friendly and Good-Neighbourly Relations between States of Asia and the Pacific" on the agenda of the Committee's 26th Session. The proposal for the consideration of the item was formally put forward in the Memorandum of the Government of Mongolia in which the significance of the item was explained (see the annex I). At that meeting it was decided to inscribe the item on the agenda of the Committee's 26th Session.

In accordance with Article 3(b) of the Committee's Statutes, the item was considered at the 26th Session held in Bangkok (Thailand) in January 1987. At its third and fourth plenary meetings, the Committee had considered the item in a preliminary manner on the basis of a preliminary study prepared by the Committee's Secretariat (Doc. No. AALCC/XXVI/5). In order to facilitate the consideration of the item at the Bangkok Session, the Mongolian delegation had submitted a working paper (see the annex II) containing the principles of international law that, in its view, could be studied and, in case of approval by the Committee, could serve as an effective legal framework

for promoting the development of friendly and good neighbourly relations between the States of the region.

The delegations of Mongolia, Egypt, Romania (observer), China, Sri Lanka, Japan, Republic of Korea, the DPR of Korea, Australia (observer), Yemen Arab Republic, Syria Nepal, Thailand and India took part in the general debate on the item.The overwhelming majority of those that had spoken in the debate supported the idea of consideration of the item and thus the elaboration of these principles in today's prevailing conditions of the region. Some of the delegates made preliminary comments and observations on the procedure to be followed in considering the item as well as on its substance.[1]

During the deliberations on the item, the delegates of Kenya, Sri Lanka and Syria proposed not to restrict the study geographically to the Asia-Pacific region only, but instead to broaden it so as to include the African continent as well. When making such proposals it was stressed that the membership of the Committee consisted of the States of the two continents, that the Bandung principles covered both of those continents and that the study and the principles of friendly relations and good-neighbourliness that are to be elaborated by the Committee may benefit the African countries as well, despite the fact that the Charter of the Organization of African Unity was regulating relations among African States. After some discussion on the question of the scope of the study, it was decided, on the proposal of the representative of Nepal, to proceed with the study of the principles and that it should embrace not only the Asia-Pacific region but Africa as well. It was agreed that at the XXVII Session, in case need arises, to take up again the question of the geographical scope of the study.

The preliminary consideration of the item allows to conclude that the elaboration and adoption of a legal instrument might be useful and serve the interests of the States of Africa and the Asia-Pacific region. Bearing this in mind and in order to facilitate its consideration the Session decided to appoint the delegate of Mongolia as Rapporteur on the item for an initial term of one year and to request him to proceed with the study and submit a report to the Committee's XXVII Session.

The present report is being submitted for the Committee's consideration in accordance with the above mandate. When preparing the report the Rapporteur has tried to be as concise and practical as possible.

1. See Report of the Twenty- sixth Session, pp. 45-66.

Materials Consulted When Preparing the Report

In accordance with the mandate given by the Committee and on the basis of the documents the list of which was provided in the preliminary study of the Secretariat[2] and some more recent relevant materials such as the documents of the Harare summit of the non-aligned countries, subsequent materials of the non-aligned movement, the materials of the International Conference on the Interrelationship between Disarmament and Development, bilateral and multilateral treaties in the political, economic, trade and socio-humanitarian spheres, the Rapporteur has examined the existing principles and norms of international law as well as those in the stage of formation. Also were examined the materials of the Legal (Sixth) Committee of the UN General Assembly, particularly those of the Sub-committee on good-neighbourly relations (A/C.6/41/SC/CPR.I, A/C.6/41/L.14), the recent joint statements and declarations of States, such as the Delhi Declaration on Principles for a Nuclear-Weapon Free and Non-violent World. Besides this wealth of material research on similar topics were also consulted.

Objective Process of Development of International Law

Today the process of codification and progressive development of international law is intensifying, the spheres of international relations regulated by international law is widening. Therefore the existing principles and norms of international law are being constantly enriched and new ones are emerging. It could be said that in the post-war period of harmonious system of international law based on the principles of the UN Charter has been created, which is being regularly developed and enriched by General Assembly declarations and other international documents. New branches of international law, such as the space law and environmental protection law have emerged. International economic law, State responsibility, the law of international organizations have been substantially developed. The norms of diplomatic and consular relations, the Law of the Sea, the Law of Treaties, the human rights and others have been codified and progressively developed. In 1974 the Definition of Aggression and in 1982 the Manila Declaration on the Peaceful Settlement of International Disputes have been adopted. At present the Draft Code of Offences against the Peace and Security of Mankind, draft articles on State

2. Doc. No. AALCC/XXVI/5, pp. 17-22.

Responsibility, international liability for injurious consequences arising out of acts not prohibited by international law, the law of the non-navigational uses of international watercourses and others are being worked out within the UN framework. Numerous bilateral and multilateral treaties and conventions on curbing the arms race, limiting or eliminating some types of armaments and weapons have been concluded or are in the process of being negotiated. The most recent example is the understanding reached between the USSR and the USA in regard to concluding a treaty on the liquidation of medium and shorter range missiles, possibly sometimes later this year (1987).

All this testifies to the irreversible character of the process of democratization, the dynamic and progressive development of international relations and international law.

The African and Asia-Pacific Regions in the Process of Development of International Law

Two-thirds of all States and of the world's population live in Africa and the Asia-Pacific region. The States of these regions have different political and social systems as well as levels of socio-economic development. Each State has its historical and cultural characteristics and specifics, needs as well as priorities. There are countries with highly developed economies as well as the least developed ones, countries that are allied with big powers and those that pursue the policy of non-alignment.

It would not be an exaggeration to state that from the point of view of international relations these two regions are the most multifarious, variegated and challenging regions of the world. Moreover, the course of development of international relations in general and the prospects of ensuring universal peace and security and developing broad, mutually beneficial cooperation between States will to a great extent depend on the development of relations in these two regions, on the course of socio-economic and political development in the countries of the regions.

For these objective reasons stable and harmonious development of interstate relations in this part of the planet, development of its relations with other parts and regions of the world could make a significant contribution to the progressive development and enrichment of contemporary international law, to the strengthening of international law and order. The post-war period, especially since the 1960s, shows that the countries of Africa and of the Asia-Pacific region have not

only made valuable contributions thereto but at the same time have acquired rich experience.

Due to the objective development of international law in scope as well as depth, this study cannot cover or pretend to cover all the existing or emerging principles and norms, but only the most general and at the same time the most important ones, which form the core of other principles and norms, and are of orientating and guiding character for States.

Universally Recognized Principles of International Law, their Legal Nature and Political Significance

Universally recognized principles of international law are the most important rules of conduct for States in international relations, which are accepted and recognized as such by the world community and have peremptory character for the subjects of international law. The special importance of these principles lie in the fact that no derogation from them is permitted, which can be modified only by a subsequent norm of general international law having the same character and that all other principles and norms of international law must correspond to them.

For that reason these basic principles of international law have great influence on the formation of concrete norms of conduct of States. As international law and State practice show, among these principles of special importance are the *jus cogens* principles embodied in the Charter of the United Nations, which since 1945 have been further concretized and developed in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[3] (hereinafter referred to as the Friendly Relations Declaration) and other international legal instruments.

International practice, including in Africa and the Asia-Pacific region, shows that, unfortunately, recognition of the *jus cogens* principles as such, their confirmation or reaffirmation in unilateral, bilateral and multilateral instruments, including in treaties and agreements, do not automatically ensure their strictest observance. At the same time international practice convincingly demonstrates that clarifying and amplifying of the contents of these general principles on the global, regional or subregional levels, taking, of course, due

3. See UNGA Resolution 2625 (XXV) of 24 October 1970.

account of their special features, help to concretize the rules of conduct of States, influencing therefore more effectively conduct of States. Thus for example, clarifying and amplifying the content of the principle of sovereign equality of States on global scale, i.e. at the level of the United Nations Organization shows that it consists at least of the following 6 interconnected elements : 1. All States are juridically equal; 2. Each State enjoys the rights inherent in full sovereignty; 3. Each State has the duty to respect the personality of other States; 4. The territorial integrity and political independence of the State are inviolable; 5. Each State has the right freely to choose and develop its political, social, economic and cultural systems; 6. Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.[4]

The similar principle in the 1975 Declaration on Principles Guiding Relations between States participating in the Conference on Security and Co-operation in Europe (hereinafter referred to as the Helsinki Final Act), i.e. in the "European context" while incorporating the above elements, also incorporates some other elements as well. It not only underlines that all the participating States have equal rights and duties, but also that they respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the Declaration.

The European specifics" is reflected in the fact that sovereign equality and respect for the rights inherent in sovereignty also implies that the frontiers of States can be changed in accordance with international law, by peaceful means and by agreement and that States have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance, they also have the right to neutrality.

The same applies to other generally recognized principles of international law. Thus comparing the contents of the principle of the non-use of force as laid down in the Helsinki Final Act with the same principle reflected in the Friendly Relations Declaration reveals that despite the concurrence of the majority of the elements contained therein, nevertheless there are certain differences reflecting the objective realities, the composition of the participants that have taken part in elucidating the contents of this universally recognized principle

4. See UNGA Resolution 2625 (XXV) of 24 October 1970.

in the European context on the one hand, and on a global scale o the other.

The generally recognized principle of the non-use of force threat of force embodied in the Helsinki Final Act reflects not on the universally accepted interpretation of the principle but also t specific conditions of Europe. Thus for example, while the Friend Relations Declaration refers to "territorial inviolability" of States, t Helsinki Final Act refers to "territorial integrity" of States. Furthermo by the Final Act the CSCE participating States pledge to refrain their mutual relations as well as in their international relations general from the use or threat of force, which are incompatible only with the purposes of the United Nations, but also with principles of the Helsinki Final Act. The content of the principle the non-use of force in the "European context" reflects the esse of the post-war political realities, as reflected in treaties agreements such as the Quadripartite agreement on West Berlin, bilateral treaties concluded between the USSR and the FRG, betw Poland and the FRG,Czechoslovakia and the FRG as well as Treaty on the basic principles of relations between the GDR and FRG, which are of cardinal importance for ensuring the contine security.

In the specific "European context" the principle of the non of force does not make special reference to mercenarism and s other specific forms and manifestations of the use of force, w are "uncommon" in Europe.

Comparative analysis of other general principles of internati law as well give reason to conclude that though the principles the contents of the Helsinki Final Act in general coincide with t of the Friendly Relations Declaration, the former's principles especially their contents nevertheless reflect the historical experie of Europe and the specific conditions of today's European real

The basic legal instrument of the African States, which regu their mutual relations is the Charter of the Organization of Af Unity. Article 3 of the Charter lays down the following prin that are to be observed in their mutual relations :

1. The sovereign equality of all member States;
2. Non-interference in the internal affairs of States;
3. Respect for the sovereignty and territorial integrity of each and for its inalienable right to independent existence;

4. Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;
5. Unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other States;
6. Absolute dedication to the total emancipation of the African territories which are still dependent;
7. Affirmation of a policy of non-alignment with regard to all blocs.

Comparing to other international legal instruments it becomes evident that the "African specifics", it could be said, is reflected in its principle 6, i.e. in the determination and the goal of African States to do everything possible to ultimately free the African continent of any form of colonial dependency. Principle 7 is also unique for the African continent, reflecting both the objective "African" reality as well as the philosophy and determination of the States of the continent to pursue non-alignment.

Besides the principles reflected in the Charter of the United Nations and the Friendly Relations Declaration, the universally recognized and accepted principles in Asia and Africa are, naturally, the Five Principles of Peaceful Co-existence (*Panch Shila*) embodied in the 1954 joint Indian-Chinese document and the Ten Principles of the Bandung Declaration on the promotion of world peace and cooperation, proclaimed on 24 April, 1955.

The Principles of *Panch Shila* include :

1. Mutual respect for territorial integrity and sovereignty;
2. Mutual non-aggression;
3. Non-interference in each other's internal affairs;
4. Equality and mutual benefit;
5. Peaceful co-existence.

The Bandung Conference, in which 29 States from Asia and Africa have taken part, expressed the conviction that peace and security could be maintained if the relations among all States are based on the following principles :

1. Respect for fundamental human rights and for the purposes and principles of the Charter of the United Nations;
2. Respect for the sovereignty and territorial integrity of all nations;
3. Recognition of the equality of all races and of the equality of all nations, large and small;
4. Abstention from intervention or interference in the internal affairs of another country;
5. Respect for the right of each nation to defend itself singly or collectively, in conformity with the Charter of the United Nations;
6. (a) absention from the use of arrangements of collective defence to serve the particular interests of any of the big powers;
   (b) absention by any country from exerting pressures on other countries;
7. Refraining from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country;
8. Settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration or judicial settlement as well as other peaceful means of the parties' own choice, in conformity with the Charter of the United Nations;
9. Promotion of mutual interests and cooperation;
10. Respect for justice and international obligations.

The above mentioned two groups of principles are no doubt universally recognized principles of conduct of States in Asia and Africa. Comparative analysis of the two sets of principles shows that in the main they coincide, though their formulations are not exactly identical. Being widely recognized principles of relations among States, they have played and do play an important political, legal, moral-psychological role in defining the code of conduct of Asian and African States. These principles have been embodied in bilateral and multilateral treaties and agreements, in other political and legal instruments, and serve as legal basis of interaction of States of the two continents.

It should be noted that it is to a large extent in Asia that the concept of non-alignment was born, which found partial reflection in the Bandung Declaration. Today the Non-Aligned Movement is composed mainly of the States of these two continents and has more than 100 members. It is playing an important positive role in international relations. The movement contributing to the search for and settlement of such vital international problems as curbing the arms race and disarmament, ensuring universal and regional security, finding just political settlement to regional problems such as those in the Middle East, the Gulf and in Central America, establishing a new, just international economic and information orders. With respect

to the African continent the movement is active in settling the situation in Southern Africa through the abolition of the heinous *apartheid* system in the Republic of South Africa, granting independence to the people of Namibia, ensuring the security of "frontline States". Taking an active part and sometimes playing even a leading role in international law-making at international codification conferences, in the work of the International Law Commission and other legal fora, the non-aligned countries are making an important contribution to the codification and progressive development of international law in all spheres of international relations.

The abovementioned Bandung principles have been creatively embodied in such important basic documents of multilateral regional and subregional cooperation as the Charter of the Organization of African Unity, the Bangkok Declaration of meeting of the foreign ministers of Indonesia, Malaysia, Singapore,Thailand and the Philippinnes of 1967 which proclaimed the establishment of the ASEAN, in the Charter of the South Asian Association for Regional Cooperation (SAARC) and others.

International practice of the past three decades shows that collective, unequivocal elucidation of the content of general principles of international law, enriching their contents with practical experience by the very subjects of international law that are required to observe them in their inter-State relations promote the strengthening and thus enhancing the effectiveness of the principles.

Moreover, and this should be underlined, collective elucidation and interpretation of the precise meaning and contents of the principles, dispelling legal ambiguities also promote the establishment of concrete, unequivocal conventional rules of conduct between concrete States.

Criteria for Indentifying the Principles for the Present Study

All the abovesaid lead to conclude that in accordance with the objective laws of social development and international relations and thus international law as well are and shall be developing in all spheres of inter-State activity. All these, naturally, require a sound legal foundation-commonly agreed upon, unequivocal basic rules of conduct of States, which would be just and balanced, and which would rule out arbitrary interpretations to suit narrow national interests of a particular State to the detriment of others.

A partial reflection of the rapid and extensive development of international relations is evident from the list of principles and norms of international law, aimed at promoting friendly and good-neighbourly relations between States, given in the abovementioned preliminary study of the Secretariat. The list covers 34 principles and norms. Although the list is quite extensive and impressive, it is by no means an exhaustive one.

Further development of inter-State relations, appearance of new spheres and forms of State interaction and cooperation, joint solution of urgent problems, including the question of ensuring world peace and security, development of cooperation in the solution of ecological and other global problems would undoubtedly lead to the enrichment and, where necessary renewal of the existing norms and principles as well as to the creation of new ones. All these would lead to multiplication of norms and rules of international law.

Proceeding from the abovesaid and bearing in mind the views of the AALCC Member-States, the Rapporteur believes that for the purpose of the study, it is important to establish a criteria for determining the principles that should be the subject of the current study. This will allow to determine not only the basic principles, the elements and contents of which should be elucidated and developed but also to reduce to a considerable extent their number.

Following this approach, and taking into account the specific features of the basic principles of contemporary international law, the Rapporteur has used the following as the criteria for determining the principles to be studied :

1. Their universally recognized and accepted character;
2. Their fundamental and guiding nature for all other principles and norms of conduct of States (which serve as the criteria of their legality);
3. Their purpose-orientedness towards promoting friendly and good neighbourly relations among nations.

Application of these criteria in relation to the above 34 principles mentioned in the Secretariat study and norms allows to reduce to considerable extent the number of the principles to be studied. Thus the Rapporteur believes that not more than 20 from amongst them may serve as essential elements of the contents of basic principles to be studied.

The dynamic development of international relations, emergence of qualitatively new problems calling for joint efforts of States to solve them has in its turn resulted in the emergence of new principles

such as the principle of the protection of the environment, permanent sovereignty of States over their natural resources and others. Such principles as promotion of collective security and disarmament, State responsibility and others are in the process of formation. All these evolutionary changes should be borne in mind and appropriately reflected either in the list of basic principles or in their contents.

Classification of the Principles for the purpose of carrying out the Study

Besides classification of the principles and norms of international law by their scope of application (universal and regional general, specific and individual), by their legal effect (imperative and dispositive), by the sources of their formation (conventional and customary) they can also be classified by the field of regulation and by their purpose. The Rapporteur believes that for the purpose of the present study and for practical convenience of its consideration, the principles under discussion could be conditionally classified as aimed at :

1. Ensuring peace, international and national security of States;
2. Promoting the development of good neighbourliness and international cooperation among States;
3. Ensuring the inalienable rights of peoples and international cooperation for the protection of fundamental human rights and freedoms.

It should be emphasized once again that such a grouping of the principles is only tentative, designed purely for the purpose of carrying out the study, and that all fundamental principles of international law are closely interconnected and interdependent, and that violation of any one of them inevitably leads to violation of others.

The first group of principles could include :

- The principle of sovereign equality of States;
- Non-use of force or threat of force;
- Peaceful settlement of disputes;
- Respect for territorial integrity and inviolability of frontiers;
- The principle of promotion of collective security and disarmament;
- State responsibility (some aspects).

The second group of principles could include :

- Non-interference in the internal affairs;
- Cooperation of States;
- Non-discrimination and just economic cooperation;
- Refraining from actions, which may cause damage to neighbouring or other States;
- Performing international obligations in good faith (pacta sunt servanda).

The third group of principles could include :

- Equality of peoples and nations; to self-determination for people under colonial domination and in territories under occupation;
- Sovereignty of States and peoples over their natural resources and economic activities;
- Respect for fundamental human rights, dignity and freedoms.

The Rapporteur's Proposals on the procedure to be followed in the Future Consideration of the Item

Because of the large number of principles to be studied, the Rapporteur suggests that these principles be examined in the abovementioned three clusters, one by one. Since this is to be a collective undertaking of the governments of Member-States, it goes without saying that they are expected to play an important role in every stage of the work. Therefore at this initial stage it might perhaps be advisable to seek the views and comments of the Member-States on all the principles in general, as well as on the first cluster of principles. On the basis of the views and suggestions received, both in written form or expressed during the consideration of the item at the Committee's sessions, the Rapporteur could prepare his first substantive report on the contents and elements of the first cluster of principles, which might then be submitted for the Committee's consideration either at its subsequent session or, if the Committee so decides, in a working group that might be established at the session or in the period between sessions. The Rapporteur could revise the principles or contents thereof in the light of the comments and suggestions made by Member-States.