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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**PEACEFUL SETTLEMENT OF DISPUTES**

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## **PEACEFUL SETTLEMENT OF DISPUTES**

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## **Peaceful Settlement of Disputes**

### **I. Introduction**

1. The topic 'Peaceful Settlement of Disputes' was first proposed by Japan during the 57<sup>th</sup> Annual Session held in Tokyo, Japan in 2018. The topic was then discussed as an agenda item in the Fifty-Seventh Annual Session and Member States actively participated in the discussions. The Brief for this topic apprised the Member States of the broad contours and contemporary developments of the subject.
2. At the 58<sup>th</sup> Annual Session (Dar es Salaam, 2019), one the major aspects of the topic, which deserve attention, namely, the peaceful settlement of international environmental disputes will be discussed.

### **II. Peaceful Settlement of Disputes under the UN Charter**

3. The settlement of disputes through pacific means is one of the most pressing global concerns facing the world today. The twentieth century was witness to some of the most horrific atrocities inflicted, during both armed conflicts and peacetime. The end of the Second World War came with the realisation that the peaceful settlement of conflicts was an imperative for the human race and all efforts should be directed towards strengthening this vision. The establishment of the United Nations was the most tangible outcome of this vision and the work of the Organization on this front continues to draw the support of the global community.
4. While the United Nations was established in the aftermath of the Second World War, efforts to create a normative framework for ensuring the peaceful settlement of disputes, date back to the 1899 Hague Peace Conference. The Conference with its primary focus on the limitation of armaments adopted conventions defining the conditions of belligerency and other customs relating to armed conflict on land and sea. One of the most significant dimensions of the Conference was the adoption of the Convention for the Pacific Settlement of International Disputes, which *inter alia*, provided for inquiries as a mode of dispute settlement between nations.

5. This was followed by the 1907 Hague Peace Conference, which also adopted several conventions relating to such matters as the employment of force for the recovery of contract debts, the rights and duties of neutral powers and persons in armed conflict, automatic submarine contact mines, and status of enemy merchant ships among other aspects. The 1899 Convention was revised and parties to a dispute could establish a commission of enquiry for elucidating the facts underlying a dispute requiring it to draft a non-binding report after the completion of its work.
  
6. The early initiatives were followed by the Kellogg-Briand Pact of 1928, specifically in the context of use of force. The pact set in motion the policy of renouncing war as an instrument of national policy and underscored the need to settle all international disputes by peaceful means. While the pact failed to prevent the Second World War given complex geo-political realities and diverse interpretations, the pact made a significant normative contribution to the evolution of pacific settlement of disputes as a universal value worthy of global recognition and respect. The establishment of the United Nations in 1945 constituted the first major institutional step in addressing the pressing concerns of nations in ensuring the peaceful settlement of disputes without resorting to prohibited conduct. Over the past decades, the successful functioning of the United Nations, despite certain challenges, in ensuring respect for the values of global peace and harmony has been well received by the global community. The United Nations recognizes the importance of cooperative and effective multilateralism in achieving peace and prosperity and the fundamental principle thereto is ensuring the settlement of disputes through peaceful means.
  
7. Article 1 (1) of the UN Charter lays down the broad philosophy of the Organization in clear terms as the settlement of international disputes or situations which might lead to a breach of peace<sup>1</sup>. The other paragraphs of Article 1 highlight the objective of

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<sup>1</sup> Article 1

“The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

developing friendly relations among nations and achieving international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and the aim of the Organization to be the center for harmonizing the actions of nations in the attainment of these common ends<sup>2</sup>.

8. While highlighting its aims and principles, the UN Charter specifies that the attainment of these values shall be based on the principle of sovereign equality of nations<sup>3</sup>. Article 2(3) contains a positive obligation on the part of States to honour the principle of peaceful settlement of disputes<sup>4</sup>. Article 2(4), prohibits States from using force in any manner that is contrary to the purposes of the United Nations<sup>5</sup>. A specific chapter in the Charter, namely Chapter VI is dedicated solely to the peaceful settlement of disputes<sup>6</sup>.
9. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (Annexure 1) in accordance with the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of Disputes (Annexure 2) have made a significant contribution to advancing the cause of peaceful settlement of international disputes and are fundamental to the efforts of the General Assembly.

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<sup>2</sup> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.”

<sup>3</sup> Article 2

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

<sup>4</sup> Article 2

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

<sup>5</sup> Article 2

2. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

<sup>6</sup> Article 33

“1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.”

### **III. Types of Peaceful Means that could be adopted to settle disputes**

#### **Negotiations**

10. Negotiations refer to the parties to a dispute establishing direct contact to settle the conflict. It is widely held to be the most fundamental method of dispute settlement. Negotiations to be successful must involve the active participation and response of both parties to the dispute in question and normally involves a face-to-face interaction between the parties. There is no role for a third party in negotiations and is usually the precursor to other modes of dispute settlement.
11. However, the duty to negotiate is only of a procedural character and does not involve substantive obligations (to conclusively settle a dispute). States are required 'to maintain a constructive atmosphere during negotiations and to refrain from any conduct which might undermine the negotiations and their progress'. The International Court of Justice in the *North Sea Continental Shelf Case* held that "the parties are under no obligation to enter into negotiations with a view to arrive at an agreement...they are merely to go through a formal process of negotiation as sort of a prior condition...they are under an obligation so as to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it."

In the *Pulp Mills Case* (Argentina v. Uruguay), the ICJ was of the view that best efforts should be exerted by both parties to arrive at a settlement through negotiations.

#### **Fact-finding/Inquiry**

12. As stated earlier, the revised version of The Hague Convention for the Pacific Settlement of International Disputes, 1899 required the parties to establish a commission of inquiry (which is also termed as fact-finding) for clearly highlighting the facts of the case. Since disputes pertaining to facts constitute the major cause of dispute, a report produced by the commission of enquiry could form the basis of an amicable settlement of the dispute. The four Geneva Conventions contain procedures

of inquiry, which stipulate that, at the request of a party to a conflict, an inquiry must be held in order to investigate alleged violations. The Dogger Bank incident of 1904, which involved an accidental firing on British fishing boats by Russian naval ships, was an instance when an inquiry was successfully resorted to. The Hague Provisions were put into effect and the report of the international inquiry commission contributed to the peaceful settlement of the issue. However, practice has demonstrated that commissions of inquiry in accordance with the Hague Convention of 1907 are in practice extremely rare. The Red Crusader inquiry of 1962 concerning an incident between a British trawler and a Danish fisheries protection vessel followed an interval of some forty years since the previous.

### **Mediation**

13. Provision was also made for mediation in the two Hague Conventions of 1899 and 1907. Mediation is closely related to negotiation, the only difference being that a neutral mediator participates in the settlement exercise, which may be carried out through the process of negotiation. The mediator participates in the negotiations between the parties to the dispute and can advance his own proposals aimed at a mutually acceptable compromise solution. The Secretary-General of the United Nations has been requested to act as a mediator or appoint one to settle disputes on many occasions. For instance, he was requested by UNSC Res 186 (4 March 1964) to appoint a mediator in the Cyprus Conflict, and UNSC Res 242 (22 November 1967) made a similar request regarding the situation in the Middle East.

### **Conciliation**

14. Conciliation combines elements of both inquiry and mediation. An organ of conciliation is normally charged with the task of investigating the facts and submitting to the parties proposals for a solution. Such proposals are not binding on the parties. A conciliation mechanism can be a permanent institution or can be established by the parties with respect to an individual case. Numerous multilateral treaties provide for conciliation as a dispute resolution mechanism for instance, the 1948 American

Treaty of Pacific Settlement, 1957 European Convention for the Peaceful Settlement of Disputes; the 1964 Protocol on the Commission of Mediation, Conciliation and Arbitration to the Charter of the Law of Treaties, the 1981 Treaty Establishing the Organization of Eastern Caribbean States and the 1985 Vienna Convention on the Protection of the Ozone Layer contain provisions incorporating conciliation as a dispute settlement mechanism.

## **Good Offices**

15. Good Offices as a dispute settlement mechanism does not appear in Article 33 (1) of the UN Charter. While very similar to mediation, they depend more on the moral authority of the individual conducting the proceedings. Good Offices involve a scenario where an individual third party seeks to influence the opposing sides to enter into negotiations. The absence of an explicit reference to good offices has been seen as a lacuna, hampering the substantive evolution of the law and practice pertaining to peaceful settlement of disputes. The Hague Conventions of 1899 and 1907 contain many rules pertaining to good offices and mediation. Treaty signatories have a right to offer good offices or mediation even during hostilities and the exercise of the right is not be regarded as an unfriendly act by any of the sides. Like other modes of diplomatic settlement, good offices are not binding on the parties.

## **Arbitration**

16. As opposed to diplomatic means of dispute settlement, arbitration as a procedure is binding on the parties. However, the prior consent of the parties is essential for the establishment of an arbitral tribunal and its decision to be binding. An arbitral body affords greater flexibility to the parties as the parties can decide the composition and membership of the body and make determinations regarding the applicable law and procedure. Each party gets to appoint an equal number of arbitrators and a neutral umpire is appointed either by the arbitrators or by a neutral and independent third

party. The major drawback of the system is the financial cost associated with arbitration and possibility of inconsistent jurisprudence emerging from the system.

#### **IV. The Peaceful Settlement of International Environment Disputes**

17. With the advancement of technology at a rapid pace, the transboundary effects of technological and industrial endeavours are increasingly being felt across the globe. In this context, the harm caused to the environment has also been increasing of late leading to drastic changes in the natural ecosystem surrounding us. These developments have also led to increasing transboundary conflicts involving States and the need to settle these disputes in the most amicable manner is increasingly becoming a global imperative.
18. The international settlement of environmental disputes has an old history. Beginning with 1893, when a distinguished international arbitration tribunal gave an Award in the *Pacific Fur Seal Arbitration* concerning a dispute between the United Kingdom and the United States as to the circumstances in which the United States could interfere with British fishing activities on the high seas. The dispute concerned the interests of conservation vis-a vis the interests of economic exploitation. In 1941, an Arbitral Tribunal gave its final award in the famous *Trail Smelter arbitration*, between the United States and Canada in a case concerning the transboundary pollution of sulphur deposits originating from Canada onto US territory. In 1957, distinguished tribunal gave its award in the *Lac Lanoux arbitration*, between France and Spain concerning the sharing of waters of Lake Lanoux in the French Pyrenees.
19. Multilateral Environmental Agreements (MEAs) generally provide for dispute settlement mechanisms that are a combination of diplomatic/political and judicial methods, though it is generally agreed that there is no 'one model' by way of which environmental disputes are settled. The 1992 Climate Change Convention could be taken as an illustration in this regard, which provides for three mechanisms to assist in dispute resolution or non-implementation: a Subsidiary Body for Implementation, to provide assistance in implementation; a multilateral consultative process to address

questions regarding implementation in a non-confrontational way; and the settlement of remaining disputes in more traditional ways by negotiation, submission to arbitration or the ICJ, or international conciliation. However, despite the mechanism adopted, it is imperative that all environmental disputes have to be settled in accordance with the Charter of the United Nations<sup>7</sup>.

20. There are five distinct models of environmental dispute settlement, which are as follows:

(a) Comprehensive dispute settlement models (E.g., Vienna Convention for the Protection of Ozone Layer, Art. 11, United Nations Framework Convention on Climate Change (UNFCCC), Art.14.

(b) Negotiation and submission of the dispute to the arbitration and judicial settlement (E.g., UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention, Art. 16, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Art. 20). The Convention on Biodiversity, 2002 in annex II, details the methodology of the dispute resolution through arbitration. The Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992 (OSPAR) provides for submission of the dispute to arbitration at the request of any of the disputing parties, if the matter remains unresolved through conciliation. The *Pacific Fur Seal arbitration* (1893), the *Trail Smelter case* (1935/41) and the *Lac Lanoux arbitration* (1957), cited above reflect the historical importance played by arbitration in the development of international environmental law.

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<sup>7</sup> Principle 26 of the 1992 Rio Declaration on Environment and Development clearly sets out that states have to “resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.”

(c) Negotiation, e.g. the Convention on Long-Range Transboundary Air Pollution, or CLRTAP, Art. 13 and its four protocols, the European Pollutant Emission Register (EPER) Protocol, Art.7, the first Sulphur Protocol, Art.8, the Protocol concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes (NOx Protocol), Art. 13, the Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (VOC Protocol), Art. 12).

(d) Mediation can also be employed to settle disputes, when negotiation fails (e.g. Art. 11(2), the Vienna Convention for the Protection of the Ozone Layer, Biodiversity Convention). In some MEAs, mediation can also be used as one of the first remedies (e.g. Art. XXV of the Antarctic Convention on Marine Living Resources) or an alternative mechanism (e.g. the Rotterdam and Stockholm Conventions).

(e) Conciliation/Conciliation Commission, e.g. Vienna Convention for the Protection of Ozone Layer, Art. 11(5), which can be created by the request of one of the parties to the dispute. This Commission is generally composed of an equal number of members appointed by each party and aims to resolve the dispute with a recommendatory decision unless agreed otherwise. Interestingly the Commission has power to elucidate facts and make proposals for a settlement; it has a strong “judicial element” to its character. Article 33 of the United Nations International Watercourses Convention, 1997 states that the parties, upon a failure to reach a negotiated settlement of their dispute, may make a joint application for conciliation to a third party facilitator. The 1992 Biodiversity Convention and the 2001 Treaty on Plant Genetic Resources provide for conciliation as a means of dispute resolution.

### **Non- Compliance Procedures**

21. One of the most significant developments to emerge in international environmental law over the years has been the incorporation of non-compliance procedures under diverse multilateral environmental agreements. Under the non-compliance procedure,

any party having reservations about another party's implementation of its obligations under a Treaty/ Protocol may submit its concerns in writing to the secretariat, with appropriate information. This mechanism is a function between conciliation and conventional dispute settlement. The first non-compliance procedure was established under the 1987 Montreal Protocol, which included the Implementation Committee established by the second Meeting of the Parties to the Protocol. The Implementation Committee seeks to bring about 'an amicable resolution of the matter on the basis of respect for the provisions of the Protocol' and report to the Meeting of the Parties, which may decide upon and call for steps to bring about full compliance with the Protocol. Following the Montreal Protocol, non-compliance procedures have been established under 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the 1989 Basel Convention, the 1996 Protocol to the London Convention, 1997 Kyoto Protocol, the 1998 Chemicals Convention, the 2000 Biosafety Protocol, the 2001 Stockholm Convention on Persistent Organic Pollution, the 2001 Treaty on Plant Genetic Resources and among others<sup>8</sup>.

## **V. The role of the Permanent Court of Arbitration (PCA) and the International Court of Justice (ICJ) in Environmental Dispute Settlement.**

22. The PCA has been engaged in resolving environmental disputes through a set of rules related to conciliation in environmental disputes. Known as the Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment, 2002 (hereinafter referred to as rules, 2002) they were adopted by consensus amongst the 96 PCA Member States on April 16, 2002.
  
23. The ICJ possesses the competence to hear disputes pertaining to international environmental law, subject to its general rules of jurisdiction. In 1993, the Court, comprising fifteen judges to create expertise in this niche area of law, established an environmental chamber. However, the response of the States on this front has not

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<sup>8</sup>Article 18 of the Kyoto Protocol called on the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol to approve, at its first session, 'appropriate and effective procedures and mechanisms to address cases of non-compliance', with the caveat that any procedures and mechanisms entailing binding consequences 'shall be adopted by means of an amendment to [the] Protocol'. In 2001, at the seventh Conference of the Parties, the parties adopted a compliance regime for the Kyoto Protocol, which is one of the most comprehensive and rigorous ones established so far.

been forthcoming. The most significant judgment of the Court on environmental law has been the case involving Hungary and Slovakia in the *Gabcikovo-Nagymaros* Project, involving the construction of a barrage on the River Danube in the year 1997.

24. While delivering its judgment, the Court concluded that Hungary was not entitled unilaterally to suspend the joint project solely on environmental grounds, despite acknowledging the principle of ‘ecological necessity’. The Court also accepted that concerns for the natural environment represented an ‘essential interest’ of a state, that norms of environmental law had to be taken into consideration in implementing the treaty, and – most importantly – that later developments in environmental law and standards should be taken into account when addressing activities begun in the past. The Court also dealt with the concept of sustainable development in brief.
  
25. Apart from the above, a number of environmental issues like transboundary air pollution, conservation of fisheries, protection of the marine environment, the diversion of the flow of international rivers, import restrictions adopted to enforce municipal conservation standards, the relationship between environmental laws and foreign investment protection treaties, access to environmental information, procedural obligations relating to notification of information and consultation, environmental impact assessment, responsibility for rehabilitation of mined lands, transboundary effects of pesticide spraying, environmental obligations in relation to seabed activities, the definition of scientific whaling; and the legality of a marine protected area have been subject matter of disputes between States and resolved through amicable channels<sup>9</sup>.
  
26. As stated by H.E. Judge Abdulqawi A. Yusuf, President of the International Court of Justice at the ‘Dialogue with Legal Practitioners’, organised by the Asian-African Legal Consultative Organization in 2018, international environmental law has undergone a remarkable development in the past decades, in the wake of the growing awareness of the importance of the protection of the environment for humankind.

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<sup>9</sup> Philippe Sands and Jacqueline Peel, *International Environmental Law*, 3<sup>rd</sup> Edition, Cambridge University Press, 2013

27. In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court observed that
- “[...] the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”
28. Consequently, a set of international legal obligations have been developed to protect the environment through numerous treaties. However, remedies for breaches of these obligations have remained to a certain extent unexplored.
29. In its 2018 decision on *Costa Rica v. Nicaragua*, the International Court of Justice rendered a landmark decision on the compensability of environmental damage and the methods for assessing such damages. It was the first time that the Court was adjudicating a claim for compensation for environmental damage.
30. However, despite the existence of dispute settlement mechanisms, it is submitted that dispute resolution in environmental matters suffers from a lack of clarity and there is an urgent need to strengthen efforts in to do away with this deficiency.
31. The International Law Commission (ILC) through its Special Rapporteur, Mr. Shinya Murase is working to develop draft guidelines on the topic Protection of the atmosphere contributing to the progressive development of international law on environmental matters.

## **VI. Comments and Observations of the AALCO Secretariat**

32. The AALCO Secretariat, recognizing and acknowledging the efforts of its Member States in environmental protection, further encourages all Member States to continue according the highest priority to matters pertaining to environmental protection.
33. All Member States are encouraged to strengthen co-operation on all matters pertaining to peaceful settlement of environmental disputes in the best traditions of Afro-Asian solidarity.
34. All Member States are encouraged to share best practices on environmental protection with each other and the Secretariat. In this regard, Member States are requested to

encourage the study of the environment in its scientific, legal and technical dimensions to create a sustainable future for the coming generations.

## **Annexure 1**

### **Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations**

**Annex to Resolution 2625 (XXV) adopted by the General Assembly on 24**

**October 1970**

*The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action, which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

***The principle that State shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered***

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered. States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement, the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action, which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

***The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter***

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

***The duty of States to co-operate with one another in accordance with the Charter***

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

- (a) States shall co-operate with other States in the maintenance of international peace and security;
- (b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
- (c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;
- (d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

***The principle of equal rights and self-determination of peoples***

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- (a) To promote friendly relations and co-operation among States; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action, which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

***The principle of sovereign equality of States***

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

- (a) States are juridically equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

***The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter***

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

Source: 25 GAOR, Supp. (No. 28), at 121

## **Annexure 2**

### **Manila Declaration on the Peaceful Settlement of International Disputes**

The Manila Declaration, which is arguably, the single most important General Assembly resolution on the topic of peaceful settlement of disputes, contains 13 points, which constitute the fundamental principles on the subject. They are:

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nation with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.
2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.
3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with the sovereign equality of States.
4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.
5. States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of Chapter VI of the Charter.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes.

12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to the relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

13. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.