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Introduction

There are certain contemporary trends in public international law of peace and war which seek protection of the individual. On the one hand, the law of nations protects community interests by making attempts to render the state secure from external danger ; on the other, it has reinforced its purpose by striving to secure man's freedom from the state. Thus conceived international law, in the fulness of its proper functions, operates within certain overriding norms and principles characterized as *jus cogens*, or international public policy. These principles have received recognition by the International Law Commission for treaties must conform to these norms. A broad recognition of principles, by its very nature subject to change, does not always reveal its specific content but there is general agreement that the use of force, genocide and self-determination now form part of *jus cogens*.

In this field resolutions of the United Nations General Assembly have their part to play in establishing certain pertinent community standards. But the main contention here and now, as in times past, has been implementation of laws. The seminar on *Bangladesh and International Legal Norms* is one more attempt to look into this matter.

May 19, 1972
7, Ballygunge Circular Road
Calcutta-19

Basanti Mitra
Honorary Secretary

SEMINAR ON BANGLADESH & INTERNATIONAL LEGAL NORMS

WHY THE SEMINAR

By

Subrata Roy Chowdhury*

The seminar is being convened by the Calcutta Centre of the International Law Association, Regional Branch (India), in collaboration with the Ramakrishna Mission Institute of Culture, with a definite objective in view. The objective is to ascertain and examine the content and scope of some pertinent international legal norms relevant to a situation similar to the movement for self-determination in Bangladesh. Many of the principles to be discussed in the seminar are perhaps now only of academic interest to Bangladesh but they still remain valid for other situations in different parts of the world.

The lesson of Bangladesh is of perennial importance to the international community. The fundamental lesson is the importance of, and the need for, formulating with precision the terms, scope and effect of certain pertinent norms which can be considered as coming within the ambit of the newly developing concept of international public policy. These norms or basic principles have their origin in a purely humanitarian and civilizing purpose. These are norms which constitute the international public order. The observance of these norms is a matter of common interest to the civilized world and many of them have the character of *jus cogens* i.e. norms with which bilateral or multilateral treaties must not conflict.

The lesson of Bangladesh reveals three important aspects of international public policy, and will be discussed in the three different sessions of the seminar.

* M.A. (Cal.), M.A. (Cantab.) Barrister-at-Law, Senior Advocate, Supreme Court of India. Mr. Roy Chowdhury is Chairman of the Committee for Review of the U. N. Charter, International Law Association, Regional Branch (India), and is the author of *The Genesis of Bangladesh: A Study in International Legal Norms and Permissive Conscience*, published by the Asia Publishing House, Bombay, 1972.

DATA ENTERED

War Crimes, Genocide and Crimes Against Humanity :

War crimes, genocidal acts and other crimes against humanity alleged to have been committed in Bangladesh are to be examined in the light of the pertinent international norms in this field. The advisory opinion of the International Court of Justice on the reservations to the Genocide Convention is a clear affirmation of the existence in international law of an international public policy in matters connected with genocidal act and atrocious crimes against humanity. Indeed the existence of an international public policy in matters relating to the crimes against the peace, the war crimes and the crimes against humanity can be seen in the judgment of the Nuremberg Tribunal. The Nuremberg judgment ; the Genocide Convention of 1948 ; Article 3 of the four Geneva Conventions of 1949 ; the Convention of Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968 ; General Assembly resolutions 2712 (XXV) of 15 December 1970, 2675 (XXV), 2676 (XXV) and 2677 (XXV) of 9 December 1970, among others, indicate the recent trends of international public policy in matters connected with human rights in armed conflicts, the war crimes and the crimes against humanity. The policy indicates that there should be a thorough investigation of war crimes and crimes against humanity, as also the need for the arrest, extradition and punishment of persons guilty of such crimes wherever they might have been committed. The inadequacy of the Nuremberg precedent in the field of crimes against humanity is no longer a handicap in view of the recent developments in the punishment of criminals.

There are several cogent reasons in support of the contention that the trial of persons accused of heinous crimes in Bangladesh should take place in Bangladesh. The Moscow Declaration of 30 October 1943, the modern theory of the universality of jurisdiction over war crimes and crimes against humanity, Article VI of the Genocide Convention, and numerous precedents of the national tribunals in Europe after the Second World War, fully support the jurisdiction and competency of the Bangladesh tribunals. Further, it can be argued with considerable force that there is no conflict between the Genocide Convention and the Geneva Convention relating to the Prisoners of War on the question of the trial of the Pakistani prisoners now in India by appropriate tribunals in Bangladesh. In any event the provisions of the Genocide Convention having the character of *jus cogens*, must prevail over all other treaties including the Geneva Conventions. Many of the crimes alleged to have been committed are common crimes in the municipal law of every civilized society. The principle that persons accused of heinous crimes

are to be judged in the vicinity of their alleged crimes, and by a tribunal of the people victimized, is now firmly established and should be accepted as a rule of international public policy.

II

Bangladesh & Norms of Self-Determination :

The political and constitutional history of Pakistan, and the social, cultural, racial and economic equations between her two erstwhile wings, if viewed in the perspective of the current norms of self-determination, would reveal the startling paradox of a dependent people in a technically independent country. The failure to reconcile the true content of self-determination with the territorial concept of independence not only was the crux of the problem in Bangladesh but, unfortunately, still is a major problem in many parts of the world. In contemporary law 'independence' is an attribute of the people, not of a physical territory. A status of subordination or colonial status is the inevitable outcome of the denial of the principle of self-determination to the people even in a technically independent country.

In contemporary law the relevant test with regard to the implementation of the norms of self-determination is : Are the people of the territory concerned completely independent? And the only proof of an independent people is : Have all governmental powers been transferred to them unconditionally and without any reservation in accordance with their freely expressed will and desire? The rulers in every territory—trust, colonial or non-self-governing, or any other territory including a technically independent country—must satisfy the aforesaid test. The exemption from international accountability operates only in respect of a territory where the principle of self-determination has been implemented. Therefore, in every territory where the test is not satisfied, international responsibility is immediately attracted, irrespective of the status of the territory, for helping complete and unconditional transfer of power from the usurping authority to the people.

The norms of self-determination are no longer nebulous or imprecise. These norms relate to : (a) beneficiaries of the right and the manner of its exercise ; (b) situations where applicable ; (c) modes of implementation ; (d) duties of the State to promote self-determination and to refrain from forcible suppression ; (e) rights of the people to resist forcible action and to receive international assistance. The five legal norms can be deduced from the Charter of the United Nations, the Universal Declaration of Human Rights, resolution 1514 (XV) of 14 December 1960,

resolution 1541 (XV) of 15 December 1960, resolution 1904 (XVIII) of 20 November 1963, resolution 2200 (XXI) of 16 December 1966, approving the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the adoption of the Proclamation of Tehran, 1968, by the United Nations Conference on Human Rights and above all, resolution 2625 (XXV) of 24 October 1970 by which the General Assembly adopted the *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*. One would expect that the international community would treat the aforesaid norms of self-determination as fundamental rules of international public policy and apply them unhesitatingly to every territory irrespective of its technical status. This point has been highlighted by the 24 years' struggle for self-determination by the majority people of Pakistan who resided in East Bengal, now known as Bangladesh.

III

Bangladesh & New Bearings on Principles of Recognition :

Mrs. Indira Gandhi's speech of 6 December 1971, granting recognition to Bangladesh, has raised the fundamental issue of the need for reconciling the contemporary norms of self-determination with the traditional norms of the law of recognition. This brings out the importance of a reappraisal of the status of a non-representative government or a military junta in the law of recognition.

If the contemporary law of self-determination is to become an effective branch of international law, then either the machinery tests of the law of recognition have to readjust themselves to the former or one must accept the inevitable inference that the two are not reconcilable. I, however, feel that there is a common denominator of fundamental importance applicable to both branches: the only test of effectiveness of a governmental authority is democratic legitimacy or popular support. The other tests in the law of recognition are machinery provisions which must be reconciled with the common denominator.

Failure to reconcile the norms of recognition with the norms of self-determination in a situation like Bangladesh may present formidable problems. For instance, if the effectiveness of a government entitled to recognition is the effectiveness through popular consent, then the physical effectiveness of firepower must be eliminated as a relevant consideration. But if an effectiveness of the latter kind is contemplated then it will conflict with

several norms of self-determination not only in the case of a subdued or colonial people but even in an independent territory ruled by a non-representative government. A proper reconciliation of the law of recognition with the law of self-determination will inevitably result in the forfeiture of the title of every non-representative government and accordingly, the duty of derecognition or non-recognition would arise. This new bearing on the law of recognition ought to be accepted as an important aspect of international public policy highlighted by the experiment in Bangladesh.

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CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Adopted by the General Assembly of the United Nations on
9th December, 1948

Resolution 260 (111), Official Records of the General Assembly,
Third session, Part 1 (A/810) p. 174.

Entry into force : 12th January, 1951 in accordance with Article XIII

Registration : 12th January, 1951 No. 1021

Text : United Nations Treaty Series Vol 78, p. 277

THE CONTRACTING PARTIES,

Having considered the declaration made by the General Assembly of the United Nations in its Resolution 96 (1) dated 11 December 1946¹ that genocide is a crime under International Law, contrary to the spirit and aims of the United Nations and condemned by the civilized world ;

Recognizing that at all periods of history genocide has inflicted great losses on humanity ; and

Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required ;

HEREBY AGREE AS HEREINAFTER PROVIDED :

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

(A) Killing members of the group ;

(B) Causing serious bodily or mental harm to members of the group ;

- (C) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ;
- (D) Imposing measures intended to prevent births within the group ;
- (E) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable :

- (A) Genocide ;
- (B) Conspiracy to commit genocide ;
- (C) Direct and public incitement to commit genocide ;
- (D) Attempt to commit genocide ;
- (E) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of December 9, 1948.

Article XI

The present Convention shall be open until 31 December, 1949, for signature on behalf of any Member of the United Nations and of any non-member state to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any member of the United Nations and of any non-member state which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited the Secretary-General shall draw up a procès-verbal and

transmit a copy of it to each Member of the United Nations and to each of the non-member states contemplated in Article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of parties to the present convention should become less than sixteen, the convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member states contemplated in Article XI of the following :

- (A) Signature, ratifications and accessions received in accordance with Article XI ;
- (B) Notifications received in accordance with Article XII ;
- (C) The date upon which the present Convention comes into force in accordance with Article XIII ;

- (D) Denunciations received in accordance with Article XIV ;
- (E) The abrogation of the Convention in accordance with Article XV ;
- (F) Notifications received in accordance with Article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member states contemplated in Article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Convention on the Prevention and Punishment of the Crime of Genocide

	<i>Signature</i>	<i>Ratification</i>
India	29th November, 1949	27th August, 1959
Pakistan	11th December, 1948	12th October, 1957

Declarations and Reservations

India

"With reference to article IX of the Convention, the Government of India declare that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case." *

* UN Publications, Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions as at 31 Dec., 1970. ST/LEG/SER.D/4, p 68 Sales No. E.17.V.5

RESOLUTIONS ADOPTED BY GENERAL ASSEMBLY

Subject : Declaration on the Granting of Independence to Colonial Countries and Peoples.¹

DATE AND MEETING : 14, December 1960, meeting 947

DECISION : Adopted by roll-call vote, 89 to 0 with 9 abstentions

DOCUMENT NUMBERS

REPORT TO ASSEMBLY : Submitted by 43 powers A/L 323 and Add 1-6

RESOLUTION ADOPTED : 1514 (XV)

The General Assembly :

"Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

"Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

"Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

"Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples which constitute a serious threat to world peace,

"Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

"Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

"Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social,

¹ UN YEARBOOK, 1960 pp. 49-50

cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

"Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit and international law,

"Believing that the process of liberation is irresistible and irreversible and that in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

"Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

"Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

"Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations ;

"And to this end

"Declares that :

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination ; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions

or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

RESOLUTIONS ADOPTED BY GENERAL ASSEMBLY

Subject : Guiding Principles for Determining Obligation to Transmit Information to United Nations on Non-self Governing Territories.

DATE AND MEETING : 15 December 1960, Meeting 948

DECISION : Adopted by roll-call vote of 69 to 2 with 21 abstentions.

DOCUMENT NOS.

REPORT TO ASSEMBLY : Submitted by Fourth Committee A/4651

RESOLUTION ADOPTED : 1541 (XV)¹

TEXT OF RESOLUTION

The General Assembly,

"Considering the objectives set forth in Chapter XI of the Charter of the United Nations,

"Bearing in mind the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

"Having examined the report of the Special Committee of six on the transmission of Information under Article 73e of the Charter, appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73e of the Charter and to report on the results of its study to the Assembly at its fifteenth session.

"1. Expresses its appreciation of the work of the Special Committee of Six on the transmission of Information under Art. 73e of the Charter ;

"2. Approves the principles set out in Section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution ;

"3. Decides that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Art. 73e of the Charter."

¹ United Nations Yearbook, 1960, pp. 509-510

ANNEX

Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter of the United Nations.

Principle I

"The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

"Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a 'full measure of self-government'. As soon as a territory and its peoples attain a full measure of self government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73e continues.

Principle III

"The obligation to transmit information under Article 73e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

"Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

"Once it has been established that such a prima facie case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter.

Principle VI

"A Non-Self-Governing Territory can be said to have reached a full measure of self-government by :

- "(a) Emergence as a sovereign independent state :
- "(b) Free association with an independent state ; or
- "(c) Integration with an independent state.

Principle VII

"(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent state the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

"(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

"Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination ; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances :

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its people would have the capacity to make a responsible choice through informed and democratic processes ;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their

status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73e cannot relieve a Member State of the obligations of Chapter XI. The 'limitation' can relate only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73e continues, unless these constitutional relations preclude the government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of information on security grounds.

RESOLUTIONS ADOPTED BY GENERAL ASSEMBLY

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

DATE AND MEETING : 24 October 1970. 1883rd plenary meeting

DECISION : Adopted without vote

DOCUMENT NUMBERS

REPORT TO ASSEMBLY : Sixth Committee report A/8082

RESOLUTION ADOPTED : 2625 (XXV)

TEXT OF RESOLUTION

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,¹ which met in Geneva from 31 March to 1 May 1970,

Emphasizing the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States,

Deeply convinced that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter,

* United Nations Press Services, Office of Public Information, United Nations, New York, pp. 62-73,

¹ Official Records of the General Assembly, Twenty-fifth Session Supplement No. 18 (A/8018).

Considering the desirability of the wide dissemination of the text of the Declaration,

1. *Approves* 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 text of which is annexed to the present resolution ;

2. *Expresses its appreciation* to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration ;

3. *Recommends* that all efforts be made so that the Declaration becomes generally known.

ANNEX

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

PREAMBLE

The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

Noting that the great political, economic and social changes in scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all 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,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles :

- (a) 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,
- (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
- (c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,
- (d) The duty of States to co-operate with one another in accordance with the Charter,
- (e) The principle of equal rights and self-determination of peoples,
- (f) The principle of sovereign equality of States,
- (g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles :

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 a 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 regimes 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, investigating, 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 a 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 States 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 people

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 and 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.

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The principle that States shall fulfil in good faith the obligation 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.

Each 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.

General Part

2, *Declares* that :

In their interpretation and application the above principles are inter-related and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. *Declares further* that :

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

**Declaration recognizing as compulsory the jurisdiction
of the International Court of Justice**

Declaration made under Article 36, paragraph 2 of the Statute of the
International Court of Justice

India¹

14 September, 1959

I have the honour, by direction of the President of India, to declare on behalf of the Government of the Republic of India that they accept, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate such acceptance, as compulsory *ipso facto* and without special agreement, and on the basis and conditions of reciprocity, the jurisdiction of the International Court of Justice over all disputes arising after the 26th January 1950 with regard to situations or facts subsequent to that date, other than :

(1) Disputes, in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method or methods of settlement.

(2) Disputes with the Government of any State which, on the date of this declaration, is a Member of the Commonwealth of Nations.

(3) Disputes in regard to matters which are essentially within the jurisdiction of the Republic of India.

(4) Disputes concerning any question relating to or arising out of belligerent or military occupation or the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the Government of India have accepted obligations.

(5) Disputes in respect of which any other party to a dispute has accepted the compulsory jurisdiction of the International Court of Justice exclusively for or in relation to the purposes of such dispute ; or where the acceptance of the Court's compulsory jurisdiction on behalf of a party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

(6) Disputes with the Government of any State with which on the date of an application to bring a dispute before the Court, the Government of India has no diplomatic relations.

(Signed) C. S. Jha
Permanent Representative of
India to the United Nations

¹ UN Publications. Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions as at 31 Dec., 1970. ST/LEG/SER. D/4, p. 14.

Registered under No. 4871 ; See United Nations, Treaty Series, Vol. 340, p. 289.

PROGRAMME

Inaugural Meeting : May 19, Friday, 4-30—5-30 p. m.

Inauguration by : Mr. Ajit Kumar Datta

Chairman's address : Mr. B. Das

Saturday : May 20 : *War Crimes, Genocide and Crimes
against Humanity*

Morning Session :

10-00 a. m. — 1-00 p. m. *Speakers* : Mr. B. Das
Mr. J. P. Mitter

Chairman : Mr. Ajit K. Datta

Bangladesh and Norms of Self-Determination

Afternoon Session :

2-00 p. m.—5-00 p. m. *Speaker* : The Hon'ble Mr. Justice S. C. Ghosh

Chairman :

Mr. B. Das *Bangladesh and New Bearings on Principles of
Recognition*

Speaker : Professor Anil Banerji

Commentators : Mr. Tapas Banerjee, Professor John Broom,
Professor Subimal Mukherjee, Mr. Subro
Chowdhury and others.