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REVIEW OF THE IMPLEMENTATION OF THE DECLARATION ON THE STRENGTHENING OF INTERNATIONAL SECURITY

Letter dated 10 February 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Chile to the United Nations addressed to the Secretary-General

I have the honour to refer to General Assembly resolution 42/92 on the strengthening of international security and to transmit to you herewith my Government's views on the subject. I should be grateful if you would have the attached text distributed as a document of the United Nations.

(Signed) Sergio C. VARRUEAS SANHUEZA
Ambassador
Alternate Permanent Representative
Chargé d'affaires a.i.

ANNEX

Strengthening of international security

One of the basic characteristics of international relations in today's world is the complex, growing interdependence of the various protagonists. New technologies and their sophisticated applications, for instance, to telecommunications, have created a situation in which the world has become indivisible. As a result, any event whatsoever occurring in one part of the globe can have an impact on other, geographically distant, areas and influence behavioural, social or cultural patterns. We can therefore say that this phenomenon has been gradually eroding the concept of rigid sovereignty and of undisputed rights which do not recognize the jurisdiction of the international community.

Although the international community is essentially decentralized, in that it does not have any organ with powers of jurisdiction, the close interrelationship among States has given rise to an emerging consensus on a number of basic concepts. The legislative expression of this consensus is a result primarily of the Charter of the United Nations and, more specifically, of resolution 2625 (XXV) on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted in 1970. That Declaration identifies the seven fundamental principles of the Charter, namely:

(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.

Acceptance of those principles has in many cases meant their incorporation into domestic law and in others has served as a deterrent to flagrant violations of international law. From this standpoint, we can say that the system set in place by the United Nations has led to the disappearance, at the conceptual level at least, of impunity as a guiding element of international relations. To put the problem in negative terms, since the drafting of the Charter of the United Nations we have begun to see a marked tendency on the part of States to offer explanations to the community of nations every time they commit an internationally illicit act. This tendency also translates into a degree of self-restraint or an attempt to mitigate the adverse consequences of an act.

Generally speaking, we can say that the basic tenets of contemporary international law are co-operation and peaceful coexistence. In the field of disarmament, this translates into strong pressure by States for the adoption of measures to reduce or limit weapons and to promote common or shared security. There is a tendency, in theory, at least to adopt less competitive attitudes, a tendency which finds its expression in the various international forums at which issues of common interest are discussed. The mere existence of these forums or bodies offers some guarantee that minimum conditions of world peace will be maintained, and it encourages an international dialogue which is positive in and of itself and can help to articulate shared expectations and ideals.

One of the most important shared ideals is perhaps that of security. This concept is based on the fulfilment of certain prerequisites such as peaceful settlement of disputes, non-use of force or the threat of force, non-aggression, non-intervention in the internal affairs of other States, respect for the sovereignty and territorial integrity of States and respect for the right of all peoples to self-determination and independence. As stated earlier, all these were identified by General Assembly resolution 2625 (XXV) as being the Charter's most important principles.

Of course, the possibility that these principles will be observed then helps to build common or shared security and is reinforced by the adoption of various confidence-building measures among peoples. The agreements reached by the 1975 Conference on Security and Co-operation in Europe, and the follow-up to them are a good example. The provisions of the Final Act include the commitment to give at least 21 days' advance notice of any military manoeuvres involving more than 25,000 soldiers.

The Declaration mentioned above and other relevant international instruments demonstrate clearly the necessary linkage between the concept of security and that of international co-operation.

The Charter instituted co-operation as a practical means of maintaining international peace and security and also enunciated it as an independent objective in its Articles 55 and 56.

There have been various schools of thought on the juridical nature of co-operation. However, the predominant one, as we have seen, establishes that co-operation is a legal obligation and that international co-operation is not a

discretionary activity or a simple moral obligation. On the contrary, as we have noted, with the adoption of the Charter of the United Nations and other relevant instruments, it has taken on another character and meaning.

It can be said that the concept has become an essential objective which is crystallising in international customary practice. The international community presumably has the obligation to undertake collective actions to solve problems and achieve certain objectives which require joint action. This issue is no longer a problem of "peaceful coexistence", but is linked to the urgent need to define common ways to resolve certain difficulties which cannot be settled individually or in isolation.

Following this line of thought, the exact legal sense of the word "co-operation" should be specified, in accordance with the Charter of the United Nations and the above-mentioned relevant instruments. Clearly, the Charter serves as a constitution for the organised international community on the basis of the maintenance of peace. It expresses a series of principles, rules and obligations of international law, whose implementation should not only ensure a more just international order and prevent new conflicts, but also allow and facilitate an orderly and harmonious development of international relations.

The Charter of the United Nations is a basic law which, in the case of co-operation, sets forth legally binding, compulsory principles, at least in certain areas, which are prerequisites to the survival and minimal development of all of the world's peoples. Its principles go beyond the limits of contractual relations between two parties and fall under the heading of principles whose implementation is a basic pre-condition for the political, social and economic development of mankind.

Co-operation, in accordance with the Charter, therefore, implies peaceful co-operation. This phrase is not a tautology, since acts of war or breaches of the peace may result from a joint action. Only those actions that are designed to promote and consolidate the maintenance of peace are covered by this concept. As such, it is a process which is lasting, continuous and unlimited in time and space, aimed at achieving a goal of general interest, such as the establishment of appropriate conditions for the normal development of the community of nations.

The Charter of the United Nations imposes obligations and prescribes rights and duties, not only for the Members of the United Nations but also for non-members. One of the salient features of the new international law which has begun to emerge since the Charter was written is the idea of jus cogens, referred to in article 53 of the Vienna Convention on the Law of Treaties.

According to this norm, jus cogens comprises certain principles recognized by all civilized nations and by the juridical conscience of mankind, which considers them absolutely essential for the coexistence of the international community at a determined point in its historical development.

The principle of jus cogens is not in itself a natural immutable law, but an evolutive concept. In general, there are four types of situations in law which require specific juridical guarantees and protection. They are:

(a) The protection of individuals per se;

(b) The protection of States per se;

(c) The protection of the general interests of the international community;

(d) The appropriate distribution of the world's resources.

In assessing whether given situations may be admitted to jus cogens status, an affirmative answer to the following questions should be forthcoming:

(1) Do the situations reflect significant, morally based social values?

(2) Will they contribute to the development or crystallization of a structured world legal system?

(3) Will juridical and natural persons commit themselves to such principles and be guided by them?

(4) Will the adoption of these principles contribute to the efficient operation of an acceptable degree of community order, including interdependent coexistence between the various international actors?

(5) Will the principles contribute to the formation of norms which will reduce international tensions?

(6) Will the incorporation of these principles allow for a beneficial evolution of law and legal systems?

(7) Will a violation of bonos mores result from the non-inclusion of these principles?

("The jus cogens Principle and International Space Law", Carl Q. Crystol, Proceedings of the Twenty-sixth Colloquium on the Law of Outer Space.)

Favourable responses to these questions will enable given principles to be categorized as jus cogens, or essential, norms which must be recognized by all "civilized nations".

The method of identification used in giving a norm the character of jus cogens would, in certain cases, namely, when it is absolutely vital for the establishment of fairer and more decent living conditions for all peoples of the world, make it possible to give international co-operation that same status and legal value. In that case, the obligatory nature of co-operation, irrespective of degree, organ and structure, must be qualified juridically, on the basis of that central idea. Here it would be useful to avoid the confusion of north-south and east-west conflicts and to make sure that the claims of the south are not used in the east-west

dispute. Nevertheless, we must not rule out functional co-operation in which the interests of shared security (peace, disarmament and development in Latin America, 1987 GEL) are identified. Within this context it is also possible that there will be new expressions of collective diplomacy which may extend co-operation in the strategic area.

In any event, within the context we have outlined, it is appropriate to encourage all measures or negotiations which may strengthen a climate of agreement and mutual understanding. To achieve such a climate and to translate into reality the legal obligations of the Charter and of resolution 2625 (XXV) referred to above, it is necessary to start by adopting certain basic agreements which flow from these ideas. One possibility would be to embark upon a lengthy and wide-ranging diplomatic effort in order to elucidate, initially on an informal basis, the areas or sectors in which it would be possible to move ahead together, without altering the strategic balance yet giving priority to the notion of common or shared security.

One way of achieving these ends might be to establish informal mechanisms or procedures, within the context of the United Nations, to consider areas or sectors in which some consensus might be reached. To the extent that some areas were identified, it would be possible gradually to raise the format of the negotiations and ultimately to have a General Assembly resolution providing the main guidelines for specific policies to be followed. Here, it would be extremely useful and appropriate for the United Nations General Assembly to ask the International Court of Justice for an advisory opinion on the juridical nature of international co-operation, the basic requirement for international security and the development of nations. We would thus have a strict and scientific criterion regarding an issue which is vital to international relations. As we have pointed out, while there is some agreement, at the philosophical level, concerning the central aspects and characteristics of co-operation, the latter has not been defined legally. The requirements of present-day society, in the light of the progressive development of international law, make it important to have such a definition. From the political standpoint, such a definition would make it possible to sanction, in practice, the general principles of law and to strengthen confidence between the different actors, thus providing elements or legal certainties for better international security.

However, in the short term it is also necessary to encourage certain specific measures:

(a) Every effort will have to be made to link the doctrine of deterrence to the contingent political circumstances of the super-Powers.

So far, the arms race has had its own momentum, characterized by an upwards spiral which does not always reflect any political détente which may occur. When one looks at world expenditure on armaments it is clear that there is an asymmetry which must be corrected. The reasons for this asymmetry are complex, being dominated by policies of supremacy and might, by the so-called doctrine of perception and a misguided search for nuclear parity in which quantitative rather than qualitative correspondence of atomic weapons is sought.

Accordingly, this should be one of the issues to be considered in whatever organs may be created in the relevant disarmament forums.

(b) There are a number of arms limitation treaties which have not yet been ratified and which countries have acceded to unofficially. They are: the Treaty on the Limitation of Underground Nuclear Weapon Tests of 1974, the Treaty on Underground Nuclear Explosions for Peaceful Purposes of 1976 and the SALT II Treaty of 1979.

If we sincerely wish to promote an atmosphere of confidence and understanding leading to greater international security, ratification of these international legal instruments acquires particular relevance.

In conclusion, urgent and unavoidable implementation of the general principles of law contemplated in the Charter of the United Nations and those recognized as having the juridical character of jus cogens, is the most important step in building a common security shared by all nations. In this context an opinion from the International Court of Justice concerning the juridical nature of international co-operation would provide a sound basis for permitting relations between States to be adapted to the said principles.

In so far as procedure is concerned, it would seem advisable also to institutionalize appropriate methods or procedures for identifying those aspects most likely to give rise to a minimum consensus by means of what we might call an "informal dialogue on consensual mechanisms". In order to give it sufficient support and political weight this aspect, like the one concerning the request for an opinion from the International Court of Justice, should be the subject of a United Nations General Assembly resolution.
