



**UNITED NATIONS
OFFICE OF LEGAL
AFFAIRS**

**International colloquium to celebrate the 60th anniversary of the
enunciation of the Five Principles of Peaceful Co-existence**

Keynote address

by

Mr. Miguel de Serpa Soares

Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

27 May 2014

Beijing, People's Republic of China

In light of the focus of our discussion today, which places an emphasis on both the historical contributions of the Five Principles [of Peaceful Co-existence] and the challenges presented by contemporary international relations, I would like to concentrate my own introductory remarks on three main topics. The **first** is to trace, from the perspective of the United Nations, the impact of the Five Principles on international law and international relations; the **second** is to speak more broadly about what I see as the role of first-order “principles” in formulating answers to complex international legal questions; and the **third** is to investigate, if only on the surface level, how the current international environment, with all the challenges and opportunities that it presents, can lead those of us who operate within it to both question and confirm our principles. My goal with these remarks, as I hope you will appreciate, will not necessarily be to provide concrete answers. Rather, I would like to raise a number of issues for our mutual consideration, which might form the basis for more in-depth discussion throughout the day.

In terms of my **first** topic, the historical impact of the Five Principles on international law and international relations, I think it goes without saying that the ideas embodied therein have been extremely significant. While others here[, including my distinguished co-panellist on this introductory panel] can no doubt speak in greater depth about their specific impact on their work, such as, for instance, in the development of domestic policy, I can say that in my role as Legal Counsel at the United Nations, I feel the impact of the Five Principles on an almost daily basis. One main reason for this is because, in many respects, the

principles enshrined in the Five Principles are also included in the UN Charter. In terms of the Charter, as many of you are no doubt aware, Article 1 sets forth the purposes of the Organization, including the maintenance of international peace and security; the development of friendly relations among nations; and the promotion of human rights. Article 2 of the Charter then provides the principles that Members of the Organization shall act in accordance with in pursuing those purposes, including the principle of sovereign equality, the peaceful settlement of disputes, and the principle that 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 Organization.

At an early stage in the history of the United Nations, its Member States also recognized the importance of making international law a more effective means of furthering the purposes and principles articulated in Articles 1 and 2 of the Charter. In 1961, a proposal was put forth in the Sixth Committee of the General Assembly for the “Consideration of the principles of international law relating to peaceful coexistence of States”. After some initial discussion, the title of this agenda item was amended to read the “Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations”.

Over the ensuing decade the Member States of the UN, with the assistance of the International Law Commission, deliberated over the content and form that such principles should take. It was here that the Five Principles, which, as you know, were first codified in 1954, represented an integral source from which the Member States of the UN could draw in their multilateral discussions. Consultations on the topic in the General Assembly coincided with the adoption of the Five Principles by the Non-Aligned Movement in 1961, which, in itself, was influenced by the elaboration of the Five Principles in the ten principles comprising the “Declaration on the promotion of world peace and co-operation” that had emerged from the Bandung Conference in 1955.

The outcome of the process in the General Assembly, codified in 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—known colloquially as the “Friendly Relations Declaration”—has the fingerprints of the Five Principles throughout its text, and it’s clear that States adhering to the Five Principles in their international relations sought consistency between those principles and the Friendly Relations Declaration. While certain differences emerged during the deliberative process, it is worthwhile to highlight that the text of resolution 2625 (XXV) was recommended by the Sixth Committee without any State making an

objection, and it was subsequently adopted by the General Assembly without a vote, granting it, in a formal sense, the imprimatur of universal acceptance.

This plethora of principles to emerge in the post-WW II era, which finds its genesis in the UN Charter, the Five Principles, the Friendly Relations Declaration and so on, leads me to my **second** main topic, namely, the role of first-order principles in the formulation of answers to complex questions. A great deal has been written in the international legal academy about the role, for instance, of constitutionalism in international law, and there is a certain degree of merit to be found in such ideas. Unlike in the domestic case, where constitutionalism would most likely refer to an actual written document, generally-accepted, from which first-order principles would be derived, on the international level, the idea of constitutionalism is much more abstract. Operating, as we do, without a global sovereign or a universally-accepted “world constitution”, in the classic sense, we are left to derive principles based on our common understanding of how the international system should operate and how we should interact with each other. We then test those principles in our work, relying on them to bring some order and clarity to challenging questions with no clear answers.

For me, in my function as the Legal Counsel, I often find myself leaning heavily on principles, both as means to clarify issues, and as a way to remind myself of the broader objectives within which I operate. As the head of the United Nations Office of Legal Affairs, which is staffed with many brilliant and hard-working international lawyers, I also have the privilege, or some would call it the burden [laugh], of being brought into the process only when issues reach a certain stage, which is, generally speaking, when things get difficult, or when the established means for arriving at a solution are either frustrated or unclear. In these moments, if I did not have first-order principles on which to rely, then I would be placed in a much weaker position, left to arrive at some ad hoc or narrow solution that might or might not be effective. Luckily such situations do not arise. Through my connection to first-order principles, such as the principles of the United Nations enshrined in Article 2 of the Charter and those articulated in the Friendly Relations Declaration, I not only gain a better appreciation of the broader picture, through which I can make more informed decisions, but I am also brought into contact with all those international lawyers, including former UN Legal Counsels and their staffs, who have come before me and devoted their time, effort and expertise to not only answering complex questions, but also to developing and applying the principles that might inform the unforeseen or particularly difficult cases that I encounter.

Before I yield the podium and we move on to what I am sure will be a vibrant and interesting discussion on these and other topics, I would like to conclude these remarks by examining the **third** topic that I identified at the outset, namely

how the current international environment both challenges and confirms our principles, and what this might mean for their prospective development.

One of the underlying themes of my remarks thus far has been to look backward at the development of the Five Principles and other similar principled frameworks, such as the UN Charter and the Friendly Relations Declaration. At this point, I would ask that we refocus the discussion on where we are currently and where we might be going in the future.

It has become very *en vogue* to describe the current international or global context as undergoing a sort of seismic shift. From the breathless way in which such changes are often described, one is left to wonder how the system in which we currently operate could ever adapt. In many areas, we certainly are seeing profound changes. The way the technology of the twenty-first century, for instance, has altered the way we communicate and absorb information, really is striking. This has of course had knock-on effects for governments in both their international and domestic relations. But to say that something is different is really to limit the discussion. The world has never been static. What we should ask is *how* things are different? And, in the context of our current discussion as international lawyers and diplomats, how these differences might change the way we approach our work.

With respect to the question of principles, our objective should be to critically examine—with a view to enhancing their application—how such principles operate in the current environment. In this process, we might examine not only how the principles themselves should be applied in light of the current context, but also whether our interpretations of such principles, the sort of secondary rules that guide their application, can withstand the pressures of the current day. If we find that longstanding principles and their application remain effective, then the outcome of this process will be to confirm the principles and make them even stronger. If it appears that either the principles or their application may require some recalibration or revision, then the objective will be to examine carefully both the principle itself and the way that we invoke it, taking into account current challenges and opportunities, and making adjustments, as necessary, based on our experience and lessons that we may have learned. In either case, the process is an invaluable one, and it is not something that we, as lawyers, diplomats and drivers of the international system, should shy away from in any way. Through such a process of critical examination, we enhance the principles that guide our action while simultaneously charting a course that might help make the present, and the future, a little less difficult to navigate.

Thank you, I look forward to our discussion today.