

## MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

By **Emmanuel Roucounas\***

*Professor of International Law, University of Athens*

*Member of the Academy of Athens*

### Introduction

The Manila Declaration on the Peaceful Settlement of International Disputes (hereinafter Manila Declaration or Declaration) was approved by resolution 37/10 (under the item Peaceful settlement of disputes between States)<sup>1</sup> by the United Nations General Assembly on 15 November 1982, on the basis of a text prepared by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at its 1980 session, held in Manila, the Philippines. The Declaration is the first important instrument of the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and one of its significant achievements.<sup>2</sup>

The Manila Declaration was elaborated on the initiative of non-aligned countries (Egypt, Indonesia, Mexico, Nigeria, Philippines, Romania, Sierra Leone, and Tunisia).<sup>3</sup>

This initiative of non-aligned countries might explain why the initial draft contained so many references to “equal rights and self-determination of peoples”, the “need for all States to desist from any forcible action which deprives peoples, particularly under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence” and the “right of these peoples to struggle to that end and to seek and receive support”. Such references, more strongly worded in the beginning, were softened in the process of negotiation that led to the adoption of the Declaration by the General Assembly by consensus. It is important to keep in mind that the context in which the Manila Declaration was negotiated and adopted was that of the difficult relations between the East and West, and of the intent of the non-aligned countries to seek clarification of existing international law in conjunction with their aspirations.

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<sup>1</sup> Note the difference of terminology used in the resolution that refers specifically to “disputes between States”, while the Declaration uses the wider term “international disputes”.

<sup>2</sup> Some other important texts of the Special Committee are the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, General Assembly resolution 43/51 of 5 December 1988; the United Nations Model Rules for the Conciliation of Disputes between States, General Assembly resolution 50/50 of 11 December 1995; and the resolution on Prevention and peaceful settlement of disputes, General Assembly resolution 57/26 of 19 November 2002.

<sup>3</sup> This initiative followed a proposal (A/34/33 (Supp), para. 13) prepared by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at the request of the General Assembly (resolution 33/94, para. 3 (a)). The proposal was considered during the Special Committee’s session held in 1979. During its sessions held from 1980 to 1982, in accordance with the mandate given to it by the General Assembly (resolutions 34/147, paras. 2 and 4; 35/160, para. 4; 35/164, paras. 2 and 4; 36/110, para. 4; 36/122, paras. 2 and 5), the Special Committee and its Working Group on the Peaceful Settlement of Disputes elaborated a draft declaration (A/C.6/37/L.2), which, following its consideration by the Sixth Committee, was submitted to the General Assembly for approval.

Nevertheless, one should not underestimate the fact that the approval of the Declaration by consensus brought together States that had already consented to the contents of Article 33 of the Charter of the United Nations and States which subsequently became Members of the United Nations. Hence, the Declaration was adopted with the active contribution of United Nations Members belonging to the various groups existing at that period.

For the first time, a normative text develops a comprehensive plan and a consolidation of the legal framework of peaceful settlement of international disputes. The Declaration builds upon and promotes general international law, the Charter of the United Nations, in particular Article 33, and other international instruments such as the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625, 24 October 1970), the American Treaty on Pacific Settlement (Pact of Bogotá, 30 April 1948), the European Convention on the Peaceful Settlement of Disputes (Strasbourg, 29 April 1957), the 1928 General Act for the Pacific Settlement of International Disputes (Geneva, 26 September 1928, revised by the United Nations General Assembly in 1949).

The Declaration contains a preamble and two operative parts. Part I encompasses the applicable principles and rules of peaceful settlement of international disputes as such. Part II is devoted to the ways and means provided for by the Charter and by general international law with emphasis on the role of the competent organs of the United Nations to this effect.

### **Preamble**

In its preamble, the Declaration reaffirms two fundamental principles of the Charter, namely the obligation of all States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, and the obligation for all States to 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.

The preamble underlines the fact that the Charter of the United Nations embodies an essential framework and the means for the peaceful settlement of international disputes. It further reiterates the principle of non-intervention and refers to the aforementioned Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.

The preamble also stresses the principle of equal rights and self-determination of peoples and the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence. It concludes by recalling the normative efforts of the international society with regard to the principles and rules concerning the peaceful settlement of international disputes and expresses the intention of the drafters to encourage the progressive development of international law and its codification. Nevertheless, until now, the International Law Commission did not produce such a general instrument to this effect.

## **Part I: Identification of Applicable Principles and Rules**

In Part I, the Declaration enunciates the principle of prevention of disputes that are likely to affect friendly relations among States, and refers to good faith. It is significant that the principle of good faith appears *expressis verbis* five times in the text (Part I, paras. 1, 5 and 11; Part II, paras. 2 and 6). Furthermore, the text emphasizes that States have the free choice of means (Part I, para. 3), and that disputes shall be settled exclusively by peaceful means.

As far as applicable law is concerned, Part I, paragraph 3, recalls the relevant obligations under the Charter, the principles of justice and those of general international law. Part I, paragraph 5, repeats the non-exhaustive list of means (negotiation, inquiry, conciliation, mediation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of settlement, including good offices), while Part I, paragraph 13, explicitly excludes any method of settlement that involves the use or threat of force. The express reference to good offices appears to be a novelty in relation to the wording of the Charter. On the other hand, in Part I, paragraph 10, the text seems to give preference to meaningful negotiation (obviously in the sense that the International Court of Justice utilizes the expression) and this can be understood in the context of the circumstances prevailing at the time of the adoption of the Declaration.

Part I, paragraph 6, stresses the role of the regional arrangements in the process of the peaceful settlement of disputes, recognizing a temporal priority, notwithstanding the primary role of the Security Council. But more explicitly than Article 52, paragraph 4, of the Charter, it adds that this does not preclude States from bringing any dispute to the attention of the Security Council or the General Assembly.

The text also provides that States parties to an international dispute shall refrain from any action that may aggravate the situation (Part I, para. 8), and calls on States to conclude agreements or include in agreements effective clauses for the peaceful settlement of disputes (Part I, para. 9). Part I, paragraph 12, amplifies the Declaration of Friendly Relations' invitation to resort to peaceful settlement of disputes in the exercise of the right to self-determination.

## **Part. II: The Role of the United Nations and its Organs**

The second part of the Declaration exposes the ways and means by which the United Nations system can contribute to the peaceful settlement of international disputes. Specific presentations are made with respect to the role of the four principal organs whose contribution is considered to be important, namely the General Assembly, the Security Council, the International Court of Justice and the Secretary-General. In addition, the Declaration specifically mentions the role that the subsidiary organs established by the General Assembly and the Security Council may have in the process of the peaceful settlement of international disputes (Part II, para. 3 (c)).

The Declaration also contains provisions widening the role that the General Assembly, actually or potentially, could play as a forum for consideration of international disputes as well as for consultations leading to the peaceful settlement (Part II, para. 3).

With respect to the Security Council, the Declaration underlines its primary role, in accordance with the Charter, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. A specific provision stresses the obligation under Article 37 of the Charter of Members States to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter (Part II, para. 4 (a)). The text further recommends making greater use of the fact-finding capacity of the Security Council in accordance with the Charter (Part II, para. 4 (d)), a suggestion whose actuality should not be underestimated.

The Declaration further emphasizes that States “should be fully aware” of the role of the International Court of Justice, which is the principal judicial organ of the United Nations, for the settlement of legal disputes among them (Part II, para. 5). Of course, the emphasis does not affect the possibility of the parties to a dispute, to choose another judicial organ for the settlement of their dispute, in accordance with the fundamental principle of the free choice of means. Furthermore, with the intent to strengthen the role of the International Court of Justice, the Declaration invites States to recognize as compulsory the jurisdiction of the International Court of Justice, in accordance with Article 36 of its Statute, and/or to insert in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties.

The Declaration also underscores the responsibilities of the Secretary-General in the field of the peaceful settlement of international disputes, in particular the role of early-warning towards the other organs of the United Nations with respect to disputes that may threaten international peace and security.

## **Related Materials**

### ***A. Legal Instruments***

Revised General Act for the Pacific Settlement of International Disputes, New York, 28 April 1949, United Nations, *Treaty Series*, vol. 71, p. 101.

American Treaty on Pacific Settlement, Pact of Bogotá, 30 April 1948, United Nations, *Treaty Series*, vol. 30, p. 55.

European Convention for the Peaceful Settlement of Disputes, Strasbourg, 29 April 1957, United Nations, *Treaty Series*, vol. 320, p. 243.

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 of 24 October 1970.

***B. Documents***

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/34/33).

***C. Jurisprudence***

International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction of the Court and Admissibility of the Application*, Judgment, *I.C.J. Reports 2006*, Declaration of Judge Elaraby, at para. 8.

***D. Doctrine***

C. Economidès, *La Déclaration de Manille sur le Règlement Pacifique des Différends Internationaux*, *Annuaire Français de Droit International*, (1982), pp. 613-627.

S. Ratner, “Image and Reality in the United Nations’ Peaceful Settlement of Disputes”, *European Journal of International Law*, (1995), vol. 6, No. 1.