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PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE
UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION

UNITED NATIONS DECADE OF INTERNATIONAL LAW

Letter dated 29 September 1989 from the Deputy Head of the
Delegation of the Union of Soviet Socialist Republics to
the forty-fourth session of the General Assembly addressed
to the Secretary-General

I have the honour to transmit to you the text of the USSR memorandum "On enhancing the role of international law".

I would request you to circulate the above-mentioned text as an official document of the General Assembly under items 141, 146 and 149 of the agenda.

(Signed) V. PETROVSKY
Deputy Minister for Foreign Affairs
of the USSR, Deputy Head of the Delegation
of the USSR to the forty-fourth session
of the General Assembly of the United Nations

ANNEX

USSR memorandum on enhancing the role of international law

International civilization presupposes general standards of conduct for the international community as a whole, the rational combination of rights, obligations and responsibility of its members in relation to each other and to the community as a whole, and a common measure of morality in their mutual relations.

All this is what constitutes international law.

The philosophy behind the Soviet Union's foreign policy is based on the need to ensure the primacy of law in the policy and practice of States, the universal applicability of the generally recognized principles of international law and the inadmissibility of their circumvention for any reason or on any grounds.

Universal and strict observance of the régime of international law provides a reliable guarantee of the free development of every people within the framework of a freely chosen socio-economic system and political structure, and is the necessary external condition for it to achieve its legitimate interests and aspirations.

At the same time, in their interrelationship and integrity, the generally recognized principles of international law taken as a whole constitute the only foundation for agreements based on equal rights and thus also for co-operation between States for the processes of integration and for the internationalization, in the common interest, of issues traditionally regarded as the domestic concerns of States.

To enhance the role of international law is to strengthen the basis of constructive interaction in an interdependent world.

In submitting this memorandum, the Soviet Union would like to draw the international community's attention to the need for intensive efforts to arrive at a comprehensive international strategy for establishing the primacy of law in relations between States. This task is linked to the organization of an in-depth international debate, which would cover, inter alia, the political, social and scientific potential of different countries, in the first place within the framework of the United Nations. The formulation of a generally agreed legal policy also presupposes the need to adopt specific measures aimed at achieving genuine progress in the universal strengthening of the rule of law.

The Soviet Union takes the view that, at the present stage of development of human civilization, an international legal strategy must:

- Promote the strengthening of existing safeguards against the circumvention of international law and the establishment of new safeguards, in particular through the increasingly widespread use of procedures and machinery for monitoring and implementation;

- Envisage a major strengthening of the procedures and machinery for the peaceful settlement of disputes;

- Encourage States to abandon a one-sided interpretation of the generally accepted principles of international law and of their obligations and to work out an integral interpretation of these principles and obligations in the common interests of mankind, in other words, an interpretation which takes into account the point of view of other parties;

- Envisage the need to develop international law and to draw up basic guidelines and a programme for such development.

An international strategy in the legal field must be realistic. It must take into account, in particular, the objective limitations of the norms and institutions of international law, which are effective only if combined with the political will of States, and the need to establish the political, defence, economic and moral conditions which would render an illegal policy unacceptable from the point of view of national interests as rationally understood. Such conditions are now emerging, as a result of the objective processes which are today bringing all States and peoples together in a common destiny.

The Soviet Union takes the view that, in addition to evolving common conceptual approaches, the international community must pay particular attention at the present time to specific practical issues in such priority areas as the strengthening and regulation of the procedures and machinery for the peaceful settlement of disputes.

The question of peaceful means for the settlement of international disputes involves, to a greater or lesser degree, a whole series of international instruments. However, unlike the cardinal provisions of the Charter of the United Nations and the Statute of the International Court of Justice, some of these instruments have become to a considerable extent obsolete: some do not meet the requirements of the contemporary development of international relations or involve an extremely narrow range of parties, while others contain provisions which are too general and unspecific or are of a declaratory rather than a binding character.

The time has now come to make the transition from declarations and recommendations on questions relating to the peaceful settlement of disputes between States to the drafting and adoption of an up-to-date, universal and comprehensive instrument of international law which would be effective in strengthening the rule of international law. The principle that all disputes between States must be settled solely by peaceful means, affirmed in the Charter of the United Nations, could be further developed and made more specific in this treaty document.

Such a document - a general instrument for the peaceful settlement of disputes - could stipulate the following obligations of States:

- The obligation of States to take all the measures within their power to prevent the emergence of conflicts between States, and to follow the universally recognized principles and norms of international law;

- The obligation of States - if they should become involved in disputes or conflicts with other States - to begin direct negotiations immediately with those States for the peaceful and, to the extent possible, rapid and complete settlement of their differences in a spirit of mutual understanding and mutual compliance and, where appropriate, to hold preliminary consultations and to set up joint machinery;

- The obligation of States in situations where it becomes evident that the direct negotiation process is difficult, or where there is no progress in such negotiations and the continuation of the dispute may imperil international peace and security, to inform the Security Council, the General Assembly or the Secretary-General of the United Nations, as well as other relevant world or regional international organizations in the proper manner, depending upon the nature and essence of the dispute;

- The obligation of States to make every possible effort, until the complete settlement of a dispute, to reach a provisional agreement and, during that period, not to jeopardize the conclusion of a final agreement or impede its achievement and, in general, not to resort to any action which could aggravate or widen the dispute;

- The obligation of States to give favourable consideration, where appropriate, to the possibility of utilizing the methods involving the participation of third parties in the peaceful settlement of disputes, such as good offices, which facilitate the organization and successful conduct of direct negotiations, or mediation, which helps to find compromise solutions to differences, in the light of the very positive experience of the good offices and mediation conducted by the Secretary-General and non-participants in disputes between States;

- The obligation of States to make use of the conciliation procedure as one method for settling disputes. In this area, it might be possible, in accordance with established practice and with the agreement of the parties, to set up a conciliation commission comprising nationals of the States parties to the dispute and, by common consent, to invite nationals of third States, including those mediators whose names appear on the Secretary-General's list. The detailed procedures governing the organization of the work of the conciliation commissions could be set forth in an addendum to the main document;

- The obligation of States to utilize fully the potential of the United Nations in the determination of the actual circumstances of disputes and conflicts, including that of the Security Council, the General Assembly and the Secretary-General of the United Nations;

- The obligation of States parties to a dispute, when direct negotiations or good offices, mediation or conciliation have not resulted, within a reasonable period of time, in the peaceful settlement of the dispute, to resort to procedures which entail binding decisions; that is, to submit the dispute, at the request of either of the parties to it, to arbitration or judicial proceedings. In this connection, of course, the role of the principal judicial body of the United Nations - the International Court of Justice - will be enhanced.

In making a proposal regarding the strengthening and rationalization of a system for the peaceful settlement of disputes, the Soviet Union believes that this issue should be given serious attention at the forty-fourth session of the General Assembly, which could consider the advisability of setting up special preparatory machinery to draft the relevant agreements. Obviously, this will require serious effort. At the appropriate stage, the agreements could be finalized and adopted at a conference of plenipotentiaries. The conference could also consider other problems and proposals concerning the development of an international strategy in the legal field, covering, inter alia, questions relating to the strengthening of guarantees of the observance of international legal obligations, the utilization of machinery for monitoring and implementation, and the codification and progressive development of international law.

The Soviet Union would be prepared to hold this conference in Moscow.

The Soviet Union would welcome any proposals or observations from other States on the issues touched upon in this memorandum; that would make for a more fruitful international debate on the enhancement of the role of international law in the contemporary world and would facilitate the conclusion of specific and generally acceptable agreements guaranteeing the primacy of political and legal methods in the solution of problems which arise in the world.
