PEACEFUL COEXISTENCE AND CONTEMPORARY INTERNATIONAL LAW

Peaceful Coexistence entered the International Law lexicon with the Sino-Indian Pancha Shila Agreement of 1954, negotiated between Chou En Lai and Jawaharlal Nehru and directed immediately to an historically long-festering territorial frontier dispute between the two neighbours in the Himalayan region. The Agreement included some postulated high-level general principles of "good neighbourliness" between the two parties which would become known as the Five Principles of Peaceful Coexistence and be invoked historically for their own purposes by other states unconnected to the Agreement or its original purpose: mutual respect for territorial integrity and sovereignty; non-aggression; non-interference in internal affairs; equality and mutual advantage; and peaceful coexistence itself. These principles, arguably, were already part of the United Nations Charter, either in terms or else implicit in the Charter's Chapters VI and VII on peaceful settlement. But Chou En Lai's government was not, in 1954, seated in the United Nations and would not be until 1971, and equally arguably was therefore not legally bound by the Charter provisions. An additional attractiveness in the Pancha Shila's Five Principles was to be found in their clarity and succinctness of formulation in comparison to the Charter, and in the unequivocal character of their rejection of the use of force and their embracement of peaceful settlement. This perhaps helps explain the widespread popularity of the Five Principles and their invocation in later years in very many general International Law acts.

In the wake of the de-Stalinisation campaign in the Soviet Union, new Soviet leader N.S. Khrushchev publicly adopted Peaceful Coexistence as the leitmotiv of Soviet and Soviet bloc foreign policy and called for an immediate Act of codification of its general principles. His call was taken up by Soviet and bloc representatives at the United Nations and addressed in particular to its specialized legal entities, the UN General Assembly's Sixth [Legal] Committee and the International Law Commission. It was also raised in the influential Geneva-based [private, non-governmental] Institut de Droit International. In each one of these specialized law-making arenas, however, the proposal to adopt Coexistence into the agenda was rejected as too "political". A "law"/"politics" dichotomy and, in consequence, a determinedly legalistic, non-policy approach to law-making was dominant in classical International Law doctrines and practice at the time, reflected in the much attacked single-vote-majority decision of the World Court in South West Africa. Second Phase in 1966 which, in its end result, effectively permitted the extension of Apartheid by the white minority government of South Africa to the UN Trust Territory. A political and legal breakthrough was, however, effectively made when the London-based [private, non-governmental] International Law Association decided to make Coexistence a prime agenda item at its biennial reunion held in Dubrovnik in 1956, and then struck a special, and in legal-systemic terms fully representative, committee charged with the development of Coexistence as a juridical concept. Within the International Law Association a distinctive legal methodology for concretizing Coexistence in experiential, case by case mode, and even some preliminary consensus as to its a priori principles, began to emerge dialectically in the direct exchanges between jurists from the Soviet and the Western bloc states, some of whom were delegates or permanent representatives of their own countries to the UN General Assembly but who felt constrained from systematic scientific-legal discussion in the official UN arenas by the all too frequent pejorative, ideological name-

calling debates there. At the same time the two bloc leaders, encountering a new political situation in the UN General Assembly with the rapid achievement of Decolonisation on a World-wide scale where the balance of power in voting terms was now, in the General Assembly, being exercised by an effective informal coalition of neutralist, non-aligned countries, became more disposed to seek their own inter-bloc accommodations directly without the need to deal with third parties. The way became set for a pragmatic compromise between the two blocs over the Peaceful Coexistence issue, where the West would accept a codifying exercise on abstract, a priori principles, albeit under the Western-favoured soft euphemism of Friendly Relations and Cooperation among States in accord with the UN Charter, and the Soviet bloc states for their part would accept the conjoining to that of a problem-oriented exercise directed to negotiation and then common solutions on concrete and immediate tension issues in Soviet-Western relations and particularly on nuclear and general arms control. The first element in this dualist approach—the code--was entered on in 1963 in the creation of a special General Assembly Committee which, after Sisyphean labours, yielded the celebrated UNGA Resolution 2625 [XXV] of October 24, 1970 under the Friendly Relations rubric. The second element yielded, on a continuing pragmatic, empirical, problem-oriented, and step-by-step basis where necessary, the Moscow Partial Test Ban Treaty of 1963, the nuclear Non-Proliferation Treaty, the ABM Treaty and Salt I Accord, and parallel agreements establishing Antarctica and the Moon and planets and Outer Space as nuclear and weapons free. In the progression from Peaceful Coexistence [in literal terms a passive condition] to positive cooperation between the two rival blocs in concrete problem-areas we have the genesis of an empirically-based International Law of Détente leading on to the final ending of the Cold War.

Lessons from the Peaceful Coexistence debate for International Law and Law-making in periods of competing systems or colliding civilizations:

First, keep open the lines of communication at all times with other competing systems and seek out a dialogue. While this should normally take place within the UN and other official, intergovernmental diplomatic-legal arenas, if these should become blocked one may sensibly turn to alternative, private fora as happened successfully in 1956 with the International Law Association.

Second, try to de-ideologise any inter-systemic dialogue by avoiding non-productive rhetorical debate over abstract ideology and dogma by concentrating wherever possible on concrete and immediate tension-issues between the competing systems, and seeking common solutions on a basis of mutuality and reciprocity of interest in any common consensus-based outcomes.