



**Statement by Mr. V. K. Nambiar Permanent Representative on the Role of the Security Council in the Pacific Settlement of Disputes at the Security Council on May 13, 2003**

Mr. President,

Let me begin by congratulating Pakistan on its assumption of the Presidency of the Security Council for the month of May 2003. I heartily join others in welcoming you in our midst today, Sir, at this session of the Council dedicated specifically to a subject of your choice. I also take this opportunity to felicitate Mexico for its handling of the Presidency of the Council last month.

2. The subject for consideration by the Council today is the peaceful settlement of disputes. The faith of nations in this world body is embedded in the collective commitment of its members to the purposes and principles of the Charter of the United Nations. The maintenance of international peace and security is a principal purpose of the Charter and involves the prevention and removal of threats to the peace as well as the suppression of acts of aggression. Equally, the emphasis upon

bringing about the adjustment or settlement, by pacific means and in conformity with the principles of justice and international law, of international disputes or situations that might lead to the breach of peace is no less prominent a purpose. Indeed, together they constitute the very first purpose of the United Nations under Article 1 (1) of the Charter. More than fifty years ago, speaking before the United Nations, Prime Minister Jawaharlal Nehru declared and I quote:

“This Assembly took shape after two mighty wars and as a consequence of those wars. What has been the lesson of those wars? Surely the lesson of those wars has been that out of hatred and violence you will not build peace. It is a contradiction in terms. The lesson of history, the long course of history, and more especially the lesson of the last great wars which have devastated humanity, has been that out of hatred and violence only

hatred and violence will come. We have got into a cycle of hatred and violence, and not the most brilliant debate will set us out of it, unless we look some other way and find some other means. It is obvious that if we continue in this cycle and have wars which this Assembly was especially meant to avoid and prevent, the result will not only be tremendous devastation all over the world, but non-achievement by any individual power or group of its objective."

3. Every nation, big or small strives for a basic modicum of stability in its domestic and international environment in order to enable it to pursue its own national objectives. Every nation thus has a legitimate interest in matters of peace and war, and must shoulder its responsibility to ensure this end. Where disputes arise between states or situations between them that might endanger international peace and security, it is incumbent upon them to settle these by peaceful means. Article 2 (3) of the Charter specifically enjoins this upon all Member States. Where the United Nations has a role and relevance, its efforts should be welcomed. A basic premise of the pacific settlement of disputes relates to the provision under the Charter calling on member States to first resort to peaceful means in settling disputes that threaten the maintenance of international

peace and security. The opening Article of Chapter VI, Article 33 (1) makes it clear that the parties to any dispute likely to endanger the maintenance of international peace and security, "shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement, or other peaceful means of their choice." The Charter sets no hierarchy between the various means enumerated therein.

4. A cursory look at Chapter VI shows that it concerns only those disputes that endanger the maintenance of international peace and security. Not all disputes that affect states or between them are covered. While it needs to be recognized that the Security Council or the General Assembly have in the normal course rarely refused to admit a question for failing to fulfill the clause "likely to endanger the maintenance of international peace and security" and has chosen to interpret this Article liberally, it has generally adopted a flexible and pragmatic approach and one that has been grounded on a recognition of the political realities on the ground rather than on purely legalistic approaches.

5. Evidently, the means provided for in Article 33 are not intended to be exhaustive. The reference to "other peaceful means of their choice" was clearly added to provide the parties greater freedom of choice. The

drafters desired action by the Organisation only in the last resort with the onus left upon the parties to settle disputes peacefully among themselves either directly, through the means listed in the Article, or through resort to regional organizations, if need be.

6. The idea that local disputes should be solved locally seems to have been favored by the drafters. Even where the Council or the Assembly has taken consideration of a situation or question, the primary responsibility for settlement remains with the parties themselves. Article 36(2) requires the Council to take into consideration the existence of agreements between the parties for the pacific settlement of disputes and the procedures adopted by the parties prior to requesting the Council to take up the issue. Given this primary responsibility resting with the parties to settle their differences or disputes between themselves, the competence of the UN organs is only subsidiary. Likewise, the measures outlined in Chapter VI are non-coercive and possess no legally-binding character beyond what has been accepted by parties and in terms of their own understanding of such acceptance of commitment.

7. How far does the power of the Security Council under Chapter VI extend? It is pertinent to note that Article 33 requires the Council, when it deems necessary, to call upon the parties to settle their disputes by

peaceful methods but the choice of means of settlement by parties, strictly construed, would entail that the parties are bound no further than to engage their best efforts to find a peaceful solution. The requirements of specific results are not indicated.

8. The Council's power to investigate in order to decide whether a dispute or situation requires its attention or whether it constitutes an independent basis of action is derived from Article 34. While invocation of this Article has, in specific instances, constituted the pre-conditions calling upon the parties under Article 33 (2) or for making recommendations under Article 36 or Article 37 (2), this Article has also been used to determine whether or not a dispute or situation actually does endanger international peace and security.

9. Article 36 gives the Council power to recommend appropriate procedures or methods of adjustments for situations brought before it. The procedure recommended in Article 36 should take into consideration any procedure for the settlement of the disputes, which have already been adopted by the parties. But in the choice of procedures under this Article, the Council is not bound by the list included in article 33 (1). The Council may devise new methods or suggest a combination of existing procedures, coupled with its recommendations for a particular procedure with advice that the

parties should consider other suitable methods. The distinction between the 'appropriate procedures' or 'methods of adjustments' which can be recommended by the Council under Article 36, paragraph 1 and "terms of settlement" which can be recommended by the Council under Article 37, paragraph 2 (in addition to its right to call upon the parties to settle the dispute by peaceful means under Article 33) is not always clear.

10. On its part, the General Assembly has over the years attempted to enhance the effectiveness of peaceful settlement of disputes between States through its own resolutions and Declarations. The 'Manila Declaration on the Peaceful Settlement of International Disputes' (A/RES/37/10) of 15 November 1982 and 'Declaration on the Prevention of Removal of Disputes and Situations which may threaten international peace and security and on the Role of the United Nations in this field.' (A/RES/43/51) of 5 December 1988, are important in this respect. An examination of these resolutions and Declarations indicates that these resolutions and Declarations relate to settlement of all disputes and are not confined only to the disputes referred to in Chapter VI of the Charter. These resolutions and Declarations, furthermore, reiterate the right of all States to resort to peaceful means of their own choice for the prevention and removal of disputes or situations

which is central to the peaceful settlement of disputes in the following manner:

- In seeking peaceful settlement 'the party shall agree on such peaceful means as may be appropriate to the circumstances of the states and the nature of the dispute'.
- In the event of failure of the parties to reach an early solution by means specified in the Charter, the parties should continue to seek peaceful solution and consult forthwith on mutually agreed means to settle the dispute peacefully.

11. A further important element insisted upon in these Declarations is that States should, in accordance with international law, implement in good faith all the provisions and agreements concluded by them for the settlement of disputes affecting them. Resolutions adopted by the General Assembly in this regard may suggest the use of various means at its disposal. Where cases arise of the Secretary General making use of fact-finding capabilities relating to a dispute or a situation, these are pursued

only with the express consent of the State or States concerned.

12. The path of negotiation is seen by many distinguished jurists as the most preferable method of settlement of disputes. Firstly, since the resolution of the dispute is by mutual consent, often arrived at after a kind of bargaining that may involve elements of give and take, there is a greater probability of the parties carrying out the agreement faithfully. Secondly, if government by consent expresses the spirit of democracy, then the diplomacy of bilateral negotiations is nearest to that spirit. Thirdly, arbitration and judicial settlement are, essentially, zero-sum games. By contrast, in bilateral diplomacy each party seeks to get something it desires with the total pay-off becoming a variable sum that provides each side scope for maximizing this sum. In other words, the process of bilateral negotiation would be more likely to lead to a 'win-win' situation for both the parties. And fourthly, an imposed solution to a dispute is likely to be reopened by the party that feels aggrieved or compelled at the time of settlement, thus proving to be no real settlement at all.

13. A decade ago, the report of the Secretary General entitled "An Agenda for Peace" had stated that if conflicts had gone unresolved in the past, this was not because techniques for peaceful settlement were unknown or inadequate. The fault lay first in

the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter, and second, in the lack of leverage at the disposal of a third party if this was the procedure chosen. Each party tends to seek a better solution than what it had been called upon to accept. A third party might not find a reason to use the leverage it has for the settlement of the particular dispute. Where it has, the development of a different order of vested interests cannot be ruled out. Given the specific character and complexity of some disputes, they may not be amenable to resolution according to any pre-set time schedule. It is true that, apart from the danger of eruption of violence because of an unresolved dispute, an unresolved conflict relating to resources might stand in the way of exploitation of the resources for the benefit of the community; or if the dispute related to a territory under colonial occupation or alien domination, non-resolution of the dispute would place the people in a condition of uncertainty or prolong their travails or sufferings. However its indiscriminate applicability to situations of irredentist, secessionist or other political movements within independent states with composite populations of different ethnic and religious persuasions can be extremely risky, even destabilising. This could be even more serious when externally inspired or assisted. In a world where the indispensability

of the sovereign State as the fundamental political unit of the international community is still vigorously reaffirmed, the perceptions by states of their territorial integrity and the essential values undergirding their respective political structures are bound to rank as the utmost priority. This will admit little compromise.

14. Against this background, we would commend the emphasis placed by the Manila declaration on the obligation of states to settle international disputes "on the basis of the sovereign equality of States and in accordance with the principle of free choice of means"(Section.I, para.3), thus incorporating one of the basic principles of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. In particular, the Declaration on Friendly Relations states that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter.

15. No State can permit aggression against its own territory. Nothing in the Charter can impair the inherent right of each member state to take all necessary measures for its self-defence if an armed attack occurs against it. This is equally true if it

is subjected to continuous low-intensity proxy war through infiltration, cross-border terrorism or other means using force. Where member states have agreed to implement resolutions of the United Nations, they are justified in expecting such implementation to be complete and in the sequence agreed to without emasculation, revision or re-interpretation. Where attempts are made to apply such resolutions selectively or in a partial, self-serving manner, they have obviously not worked but have only served to subvert their original spirit. In some cases, over time, their subtext has changed and they have proved obsolete, defunct and overtaken by events on the ground.

16. India's experience with the working of the United Nations has been sufficiently long and educative for us to remain vigilant of the threats, pressures and blandishments that have been exerted upon us during various periods of our history in the guise of furthering the pacific settlement of disputes affecting us. Our stance has been consistent and principled. We have not been deterred by the temporary approbation or opprobrium of the members of this body or other bodies of this Organisation despite our abiding respect for it. We remain confident that we retain the understanding, sympathy and support of its broader membership in our overall stance. For the rest, we are fully conscious of being able to summon the firmness and

resilience needed to safeguard our national interests. We are also aware that more than anything we need to remain continuously responsive and reflective of the needs and aspirations of our peoples as expressed through our own democratic institutions.

17. It is our view that the democratic norm provides the best possible means to address discontent within societies and disputes between them. Respect for pluralism and diversity is fundamental to this approach. A society that promotes democratic norms and respect for tolerance is better placed than one that lacks these values in addressing disputes. Democratic societies are far less prone to extremist ideologies based on conflict, violence and militarism. They are also less inclined toward waging wars. Periodic elections that make political leaders accountable to Parliament and to voters act as a regular check against any predisposition to policies of military adventurism. As Prime

Minister Vajpayee said recently and I quote: "... If the 20<sup>th</sup> century saw the global growth of democracy, the new century should see its further expansion and enrichment. Especially, we should develop democracy as an effective instrument for fulfilling people's aspirations and resolving conflicts and contentious issues. History has proved time and again that free and democratic societies are the ones that are creative, self-corrective and self-regenerative." Unquote.

18. I wish to conclude by reverting to the speech I referred to in the beginning where the Prime Minister of India declared that he had no fear of the future. He went on to say and I quote:

"... if we banish this fear, if we have confidence, even though we may take risks of trust rather than risk violent language, violent actions and in the end war, I think those risks are worth taking." Unquote.

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