SUMMARY RECORD OF THE NINETY-FIRST MEETING

Held on Monday, 23 September 1968, at 10.50 a.m.

Chairman: Mr. RIPHAGEN (Netherlands)

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COMPLETION OF THE FORMULATION, IN THE LIGHT OF THE DEBATE WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE SEVENTEENTH, EIGHTEENTH, TWENTIETH, TWENTY-FIRST AND TWENTY-SECOND SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964, 1966 AND 1967 SESSIONS OF THE SPECIAL COMMITTEE, OF:

(b) THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES (continued)

Mr. ENGO (Cameroon) said that, in the opinion of his delegation, the principle of equal rights and self-determination of peoples continued to be the most important of the principles that the Committee had been called upon to study. Article 55 of the Charter made that principle the basis of international co-operation. New methods were now being used to subject peoples to foreign domination, and the Special Committee must fully understand the intrigues of the age, in order that it might attempt a statement of the law capable of protecting the principles of the Charter.

A divergence of opinion had arisen in the Committee concerning the nature and scope of the principle under consideration. His own delegation would not subscribe to any statement of the principle which did not forcefully reaffirm the right of peoples to equality and self-determination. The formulation of the principle must, as a minimum, (1) affirm the existence of an inherent right of peoples to equal rights and self-determination, (2) clearly impose a general duty on States to respect it, (3) state the particular duty of States to refrain from performing specific acts which undermined or were capable of undermining or in any way hindered the exercise of that right, and (4) recognize a fundamental right of peoples to take such steps as were necessary and reasonable for self-defence. There did not appear to be any serious disagreement concerning the existence of the right of self-determination as such. However, the definition of the term "people" - the repository of the rights and duties involved - was causing a problem. In his opinion, it might be wise for the Committee to regard the principle as applying to two situations: to peoples occupying a geographical area which, but for domination from outside it, would have formed an independent State (colonial Territories, Trust Territories and the like), and collectively to peoples occupying an independent State who might nevertheless be subjected to new forms of oppression, such as neo-colonialism. That would exclude secessionist movements, for although it was true that a number of States had been carved out arbitrarily,

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it could not be denied that the fait accompli had led to the creation of a legal personality recognized under international law and that if, in the exercise of self-determination, the peoples who made up any such State wished to change the resulting situation, their actions were purely a matter for the internal law. Peoples had the right to change their governments and political institutions, even if that resulted in the creation of two States where there had been only one. International law should limit itself to prohibiting acts of external forces or their local agents to undermine the free exercise of the rights of peoples.

The application of the principle under consideration with respect to peoples who had obtained their independence would prohibit any interference, from outside, with the results of self-determination. In his delegation's view, the amendment on that point submitted by the Ghanaian delegation at the preceding session (A/6799, para. 178) was a logical follow-up to paragraph 1 of the ten-Power proposal (A/AC.125/L.48).

Conditions of dependency posed the greatest problems with regard to the definition of the term "people". However, the advent of colonial exploitation, either by force or under so-called "treaties", had made subjects of peoples who in many cases had possessed full political and social institutions and had answered the definition of a nation. The rights of those peoples could not be considered to be extinguished in the eyes of international law, any more than in domestic law the victim of a kidnapping was thereby deprived of his legal existence.

Without underrating the problem of defining the concept of a "people", it was still necessary to recognize that the realities took little account of polemics. It had been suggested that rights should be accorded to peoples who had reached a sufficient degree of advancement. But could the determination of that be left to the colonial Power? Artificial units had been carved out, containing peoples who did not wish to attain independence under the conditions offered them. In that connexion, he recalled the case of the former British Cameroons which had been part of the Federation of Nigeria and which, in a plebiscite held under United Nations auspices, had indicated its desire to join the former French-administered Cameroons. Imperialism only suspended, but did not destroy, the freedom to exercise the right of self-determination; thus, the attainment of independence was not the criterion.

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Aside from their moral duties, colonial Powers and those who claimed rights from defunct institutions had a legal duty (1) to respect the right of peoples to self-determination and (2) to implement the principle in question in respect of peoples in Territories under their domination by taking immediate steps to remove impediments to the free exercise of those rights, including their own withdrawal. The provisions of the Charter did not confer any legitimacy on domination over peoples and called for a speedy end to it. Moreover, the transfer of powers was not to be made at the pleasure of the Power holding them.

To sum up, his delegation wished to emphasize the following basic facts:

(a) All organized peoples had an inherent right to exercise equal rights and self-determination;

(b) No people had a divine right to dominate other peoples. Colonialism drew no legitimacy from international law;

(c) All colonial and other similar situations were strictly temporary. The Charter of the United Nations ordained a speedy winding-up process for the return of powers to subjected peoples. That included the duty to set up any necessary machinery in the light of the changes in structure;

(d) While such temporary situations existed, the territory of colonies or other Non-Self-Governing Territories could not constitute an integral part of the territory of States exercising colonial rule over them. International law did not allow slavery to masquerade as an indirect acquisition of territory against the will of the peoples therein;

(e) It was the duty of all States to assist the United Nations in carrying out its responsibilities for liquidating the ugly institutions of colonialism and neo-colonialism;

(f) Finally, where all peaceful means of obtaining freedom and self-determination had been exhausted, the law must safeguard the right of dependent peoples to defend themselves against persistent evil.

Mr. KESTLER (Guatemala) said that, in his view, the principle of equal rights and self-determination of peoples was not only one of the objectives of the United Nations, but also a norm of international law on which world peace and peaceful and friendly relations between States were based. During earlier debates in the Special Committee, some delegations had considered that the principle

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concerned only peoples subjected to colonial rule, while others had felt it to be of a universal nature. His delegation subscribed to the latter view and considered, for a number of reasons, that the principle should be given the widest application. In the first place, colonialism was not the only field in which breaches of the principle constituted a threat to peace. In the second place, operative paragraph 6 of General Assembly resolution 1514 (XV), which stated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations", should reassure those who feared that the universal application of the principle might favour secessionist movements inside independent States. In that regard, he recalled that his delegation had voted for that provision in the light of the interpretation offered by one of the sponsors of the draft, namely, that the provision did not apply to territories which were the subject of disputes between States Members of the United Nations or, consequently, to communities which formed an integral part of the territory of independent States. In the third place, the word "peoples" was used a number of times in the Charter, particularly in the Preamble, as a synonym for nations or States.

The principle of equal rights formed the basis of two fundamental rights of States. The first, that of self-government and internal sovereignty, conferred on the State all the powers deriving from the exclusive and complete exercise of its authority over the area of land which constituted its territory. The second, namely, the right to independence and external sovereignty, was the right of every State to act in accordance with its wishes without submitting to constraint by other States. That right should not, however, be regarded as absolute, since independence was modified in many cases by the concept of interdependence. Nevertheless, it excluded any subordination of one State to another, while at the same time the obligation to respect the norms of international law and the demands of coexistence and international co-operation still remained.

In that light, a broad interpretation of the principle under consideration had been adopted by a majority of the members of the Special Committee. He outlined the relevant provisions of the drafts previously submitted to the Committee by the United States of America (A/6230, para. 459 (B)), the United Kingdom

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(A/6799, para. 176), Czechoslovakia (A/6230, para. 457 (1)), and the text of Burma, Dahomey, Lebanon and other countries (A/6230, para. 458 (1)), which could be compared with a United Kingdom provision (A/6799, para. 176 (2) (c)). The broad conception of the principle was also evident in the amendment proposed by Ghana (A/6799, para. 178) to the ten-Power proposal (A/6799, para. 177).

He believed that the broad conception of the principle of equal rights and self-determination of peoples entailed the obligation of mutual respect among States, with regard not only to their political personality but also to their economic and social development. Hence, it imposed on States, firstly, the duty to respect the institutions of other States and not to impede their progress, and, secondly, the duty not to prevent the exercise by other States of their right of self-determination. For those reasons, his delegation would favour the adoption of a general statement such as that in paragraph 1 of the United States proposal (A/6230, para. 459). To that statement should be added the prohibition, which appeared in some other proposals, of any act aimed at the partial or total disruption of the national unity and the territorial integrity of other countries - a detail which was in keeping with the concern felt by the majority, in view of the current situation in various regions.

Nevertheless, his delegation believed that the principle under consideration was of greatest importance in colonial matters. The Committee should therefore bear in mind the relevant resolutions of the General Assembly, and in particular the Declaration on the Granting of Independence to Colonial Countries and Peoples, which contained elements that were essential to its work, including the principle enunciated in paragraph 6.

Mr. CRISTESCU (Romania) emphasized the fundamental importance of the principle of equal rights and self-determination of peoples as the basis of friendly relations between nations. As a socialist country, whose foreign policy had always had as its central objective the development of co-operation with all States and, more especially, the development of bonds of friendship with countries which had the same social system as itself and whose institutions were based on the same philosophical concepts, Romania had always defended the right of self-determination of peoples and the principles of equal rights of peoples, the

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independence and national sovereignty of States, and non-interference in the internal affairs of States. The Romanian people, whose history bore witness to their eternal love of freedom, was naturally disposed to respect other peoples and their personalities.

He referred to the historical and political origins of the principle of independence of peoples and its ratification on the international level, and said that the evolution of that principle had entered its decisive phase with the emergence of the socialist States as a result of the October socialist revolution and with the growth of socialism in the world after the Second World War. The socialist States had struggled for recognition of that principle on the international level. As the General Secretary of the Central Committee of the Romanian Communist Party, Mr. Nicolas Ceausescu, had observed, the socialist revolution had encouraged the growth of the idea of nationhood and the vigorous affirmation of the patriotic feelings of the masses and of national life; furthermore, by combating antagonism between nations and the causes of the exploitation and domination of one people by another, socialism was laying the sure foundations for rapprochement and co-operation between States and for the reconciliation of national interests with international interests.

That twofold requirement of national existence and co-operation among nations on the basis of mutual respect was one of the fundamental characteristics of the modern world. All the peoples who had achieved their independence at the cost of heavy sacrifices were resolved to do everything that was necessary to consolidate that independence - or, in other words, their existence as nations - and to defend their right to decide their own future and the political and legal content of national and State sovereignty. All over the world, the desire for independence and the wish to be masters of their fate was mobilizing peoples against colonialism and against the imperialist policy of intereference in the internal affairs of States.

Romania had always supported the national liberation struggles of colonial peoples, as was attested by its foreign policy records and the statements of its leaders, and it was co-operating with the new countries. It had never ceased to stress that the practice of colonial oppression was incompatible with acceptance of the principles of the Charter and that it was time for all the Members of the Organization fully to respect the Charter principles concerning the equal sovereign rights of peoples.

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The principle of equal rights and self-determination of peoples was explicitly enunciated in the Charter and in many instruments adopted subsequently, which not only confirmed that principle but developed its various aspects. To respect the independence of peoples was to respect their existence and their personalities; it was also to respect their sovereignty, since sovereignty was the consequence of the exercise by peoples of their right to be independent - in other words, the right of self-determination and the right to organize their national life as they desired. To respect the sovereign rights of nations and peoples was to make international relations possible. Any violation of the principle of equal rights and self-determination of peoples was a serious blow to the very existence of the peoples concerned, a danger to peace and a blow to international legality.

As regards the actual wording of the principle, it would be a good idea to take as a guide the General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)), and start by affirming the right of all peoples to decide their future, i.e. to choose their economic, social and political system, to establish an independent State of their own, to work freely for their development, to dispose of their natural wealth and resources, and to exercise their sovereignty with complete freedom. States were required to respect all those rights and encourage their exercise.

Since colonialism and discrimination were contrary to the principles of international law and the Charter of the United Nations and must be eliminated, it should be made clear that Territories still under colonial domination could not be considered an integral part of the territory of the colonial Power. Furthermore, since all people had the right to fight for their liberation and independence, care should be taken to ensure that no provision in the declaration that was adopted could be so interpreted as to restrict the exercise of that right. Finally, there ought to be a provision prohibiting States from using force or taking repressive measures of any sort against peoples which were still under colonial domination.

Mr. SHITTA-BEY (Nigeria) said that the importance of the principle of equal rights and self-determination of peoples was due in particular to the fact that it was a prerequisite for the existence of an international legal order.

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Respect for that principle was vital to the maintenance of international peace and security, economic, social and cultural progress throughout the world, and the development of friendly relations and co-operation among States.

In Article 1 of the Charter, setting forth the purposes of the United Nations, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples came second only to the maintenance of international peace and security. The principle had been reaffirmed in many General Assembly resolutions, in other international instruments such as the Montevideo Convention of 1933, the Charter of the Organization of American States of 1948, the Charter of the Organization of African Unity and the International Covenants on Human Rights and in declarations of international conferences of States, such as the Bandung, Belgrade and Cairo Conferences of Non-Aligned States.

In its broadest sense, the principle under discussion should be regarded as a general and permanent principle of international law linked to other fundamental principles such as non-intervention in matters within the domestic jurisdiction of any State and the sovereign equality of States.

It was the duty of economically advanced countries to take appropriate measures both individually and collectively, to level out the inequalities that still existed through economic, technical, scientific and cultural co-operation.

Although some doubts had been expressed about the meaning to be given to the word "people", in the principle, in the view of the Nigerian delegation, it was not a betrayal of the cause of human rights and fundamental freedoms to say that in the light of the guidelines given by the Charter, the history of the application of the principle by the United Nations and the relevant General Assembly resolutions the principle was applicable only to people under foreign or colonial domination. The Committee should therefore avoid any wording that might be interpreted as widening the scope of the principle and making it applicable to peoples already forming part of an independent sovereign State. To do otherwise would only encourage rebellion and secessionist movements in sovereign States. If the scope of the principle were widened in that way, it could be used as a pretext to subvert the established national unity and territorial integrity of sovereign States. Since there were in fact differences in political beliefs and constitutional systems, no State should

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attempt to impose its own political views on the constitutional law and practice of other States.

Finally, the principle of equal rights and self-determination of peoples entailed the right of States freely to choose their own political, economic and legal systems; the right freely to continue their development and to follow the foreign policy of their choice without foreign intervention or intimidation; and the right freely to dispose of their natural wealth and resources.

Any wording of the principle under disucssion which recognized the basic rights of self-determination and equality as his delegation understood them would be acceptable to it.

Mr. VAN LARE (Ghana), after noting the importance of the principle of self-determination for the peoples of the world, said that the Committee had wide scope for initiative in completing its formulation. The principles on the agenda could not be considered in isolation; the principle of equal rights and self-determination of peoples was necessarily linked with the principles of "legitimacy" and "domestic jurisdiction" and with the principle of "non-intervention in matters within the domestic jurisdiction of any State".

The principle of equal rights and self-determination of peoples was the basis of "friendly relations among nations", the development of which was one of the purposes of the United Nations. Since the Second World War, general acceptance had been given to the theory of Quincy Wright that: "The interpretation and application of a State's international obligations are never within its domestic jurisdiction... To hold that international law has to give way to independence constitutes 'an anarchic interpretation' of domestic jurisdiction which would be a 'negation of any legal system'." The legal obligations of Members of the United Nations with respect to the self-determination of peoples within their territory prevented them from pleading domestic jurisdiction as grounds for opposing examination of a question involving the principle of self-determination by United Nations organs. Furthermore, in resolution 2326 (XXII), the General Assembly reiterated its declaration that the practice of all forms of racial discrimination "constituted a crime against humanity", presumably using the phrase in the same sense as was given it in the Nürnberg Principles (A/1316) as formulated by the International Law Commission.

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There was no doubt that, as the question of apartheid had shown, the extent of international participation in domestic strife had vastly increased in recent years. Richard A. Falk had pointed out, in "The International Law of Internal War", how foreign States could try to derive advantage from internal wars, to the detriment of the principle of non-intervention. That principle would seem to be further strained by General Assembly resolution 2326 (XXII), in which that body reaffirmed the "legitimacy" of national liberation movements and urged States to give "all necessary moral and material support" to the peoples struggling for self-determination. That struggle, as George Ginsburgs had pointed out, could not be qualified as aggression since the imperial Power had had no right to take over in the first place; resistance on the part of that Power, however, in order to preserve a status already rooted in a violation of international law, was aggressive in character. That, in fact, had been the position of India in the Goa affair of 1961, despite the fact that Portugal's original "aggression" had preceded India's action by more than four centuries.

It should be realized that there was a radical contradiction between the traditional norms of national sovereignty, domestic jurisdiction and supra-national authority and other norms which were in fact being applied on the international scene. Thus, in emerging centralism could be discerned in the response of the international community to intra-State conflicts involving colonialism and institutionalized racism; a Government which practised discrimination or denied self-determination tended no longer to be recognized as a legitimate Government. Consequently, as Richard A. Falk had said, the legal rules about non-intervention were suspended in those instances in which the community was confronted with an "illegitimate" régime. However, in order to avoid instability, the illegitimacy should be recorded by a United Nations resolution. That view, in short, recalled the ancient doctrine of bellum justum put forward by Vattel, who more than two centuries before had written that in a civil war a foreign Power could legitimately assist the party fighting for justice. Any uncertainty inherent in such a concept had been removed by the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), which made it clear that, in the case of colonial Territories, sovereignty belonged to the

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people and not to the administering State. The General Assembly practice in regard to the rebel government of Southern Rhodesia showed that it was based on the illegality of a minority racist régime, against which intervention by force was required, since it was equated with foreign domination, violating the principle of non-intervention and depriving the African population of their right to self-determination.

Opposed to that view, which was held by the majority of nations at the present time, was the attitude of certain nations - notably the Western Powers - which asserted a respect for formal legitimacy in all circumstances. Such an attitude was a throwback to the days when the rules of international law had conformed to those Powers' interests. As S. Prakash Sinha had said, neither the new States of Asia and Africa nor the communist countries were disposed to undertake obligations based upon rules drawn up to suit Western interests.

In order to formulate the principles of equal rights and self-determination of peoples, there must be an understanding as to what constituted a "people", in connexion with which Rupert Emerson had drawn attention to a dangerous vagueness. It was a question of how far self-determination should go. The very States which had most recently benefited from it were threatened by the tribal separatism of such groups as the Nagas of India, the Lunda of the Congo and the Shifta and Masai of Kenya; such a centrifugal tendency could bring about chaos of the kind already witnessed in the Congo. It seemed, therefore, that the principle of self-determination was limited to political units already defined as countries or colonies (or subdivisions thereof; that seemed to be the sense of paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)). In practice, self-determination should not go to the extent of creating an entity without economic or political viability, and should not deprive a State of its economic base. But there also had to be some agreement on those two ideas, since no country could be wholly self-sufficient. In the last analysis, it was up to the international community itself to define the limits of the right to self-determination. It should be borne in mind, as Wolfgang Friedmann had pointed out, that the present era was witnessing both the climax of the national State and its crisis arising from the disintegration of larger units into

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often barely viable political entities, a tendency which stressed the need to turn to a new aspect of international law co-operation, which parallelled the traditional one of coexistence.

From the foregoing it was to be concluded that, on the one hand, peoples within a colonial framework had the right to subdivide into as many smaller units as they desired, however regrettable that tendency might be, and that, on the other hand, the international community, having guaranteed the right to self-determination, was responsible for helping the new States to survive. The latter proposition was of vital importance.

Furthermore, operative paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples also implied that, within those geographical limits, the right to self-determination could be exercised only once. That seemed to follow from a study of the United Nations intervention in the Congo; at that time the Security Council had supported the Congolese Central Government against Katanga, whose secession had been declared "illegal". Moreover, the Secretary-General had later said that Katanga was not a sovereign State. That meant that, once the international community had ruled that a majority within a given political unit had exercised its right to self-determination, the resultant Government was legal and its sovereignty was established. From then onwards, any moves toward secession bore no relation to the right of self-determination; they were strictly revolutionary, and the principles proscribing intervention and force resumed their traditional relevance.

In conclusion, he drew attention to the relation between "non-intervention" and "self-determination". The latter was, as it were, of a continuous nature and must not be violated by foreign intervention. That was made clear in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, adopted by the General Assembly in 1965.

The meeting rose at 12.20 p.m.