



Nineteenth session

CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING  
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN  
ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

Comments received from Governments

CONTENTS

Comments received from Governments of Member States

United Kingdom of Great Britain and  
Northern Ireland . . . . .

Page

2

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

18 September 1964

Her Majesty's Government submit the following comments on the principle of equal rights and self-determination of peoples referred to in paragraph 5 of resolution 1966 (XVIII); they reserve the right to present at an appropriate time additional comments on this principle as well as on the other two principles referred to in paragraph 5 of resolution 1966 (XVIII).

The principle of equal rights and self-determination of peoples

In the opinion of Her Majesty's Government the two elements in the principle of equal rights and self-determination of peoples are complementary to one another, and in so far as self-determination is a legal, and not merely a political concept, it is properly expressed as a principle and not as a right. The concept of self-determination has been invoked, or prayed in aid, in a number of different circumstances; its relevance, it is submitted, can only be determined in relation to the circumstances of each particular case, and in the light of other principles which are affirmed in the United Nations Charter.

Scope of the concept of self-determination

Self-determination was one of the basic concepts of the peace settlement which followed the First World War, and its application in that context considerably reduced the number and size of national minorities in Europe. The concept then meant, broadly, that the wishes of the peoples concerned should be taken into account before any territorial changes were made. It was clear that the concept of self-determination was considered in this context, as well as in the context of the aspirations of peoples who had not yet attained a full measure of self-government, by the framers of the United Nations Charter. Differing views were then expressed as to the scope of the concept. These are summarized as follows in the summary report of Committee I/1 which contains the following passage:

"Concerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponded closely to the will and desires of people everywhere and should be clearly enunciated in the Charter; on the other side, it was stated that the principle conformed to the purposes of the Charter only in so far it implied the right of self-government of peoples and not the right of secession" (UNCIO, Vol. 6, p. 296).

Expression of the principle of equal rights and self-determination of peoples in the United Nations Charter

The principle now under examination is expressed in Article 1 of the United Nations Charter. In paragraph (2) of that Article one of the purposes of the United Nations is stated to be:

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

In recommending the adoption of this paragraph Committee 1/1 of the San Francisco Conference stated that it understood

"that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct; that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people ....." (UNCIO, Vol. 6, p. 455).

It can therefore be seen that the principle of equal rights and self-determination of peoples is, and was intended by those who drew up the Charter to be, a principle of universal application. The Charter itself is expressed in its Preamble to have been made in the name of "the peoples of the United Nations", determined, inter alia, "to reaffirm faith in the equal rights .... of nations large and small"; but, as only States can be Members of the United Nations, it is apparent, that the reference to "peoples" in the context of the Charter is directed to those who are so organized as to constitute a State in the territory which they occupy. Therefore, the principle of equal rights and self-determination of peoples applies primarily to the equal rights and self-determination of independent States. Understood in this sense, the principle is clearly linked

to other concepts which are expressed and recognized in the United Nations Charter, such as the sovereign equality of States, territorial integrity and political independence, and the principle of non-intervention. Nevertheless, as a political principle, self-determination is not limited to States and in any event must be subject to the obligations of international law both customary and conventional. As pointed out above, after the First World War the principle of self-determination was applied mainly to minorities. This illustrates the flexibility of the application of the principle to particular circumstances, and emphasizes that it is not necessarily confined in its application to independent sovereign States.

Although the term "self-determination" is not used in Chapters XI and XII of the Charter, the concept itself is implicit in both chapters. One of the basic objectives of the trusteeship system is stated in Article 76 (b) to be "to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned". Similarly, Article 73 of the Charter provides that States responsible for the administration of territories whose peoples have not yet attained a full measure of self-government should "promote to the utmost, within the system of international peace and security established by the ..... Charter the well-being of the inhabitants of these territories" and to this end should, inter alia,

"develop self-government ..... take due account of the political aspirations of the peoples and ..... assist them in the progressive development of their free political institutions according to the particular circumstances of each territory and its peoples and their varying stages of advancement".

The development of self-government and the progressive development of free political institutions are both entirely compatible with the concept of self-determination. Indeed, the principle of self-determination has been of fundamental importance in British policy towards the non-self-governing territories and has played a cardinal part in their evolution to self-government and independence. It is, however, in the opinion of Her Majesty's Government to place an

unwarrantable gloss on the Charter to derive from the wording of either Article 1 (2) or of Articles 73 (b) and 76 (b) a "right" of self-determination. As is pointed out in Commentaries on the Charter (Goodrich and Hamboro (revised edition), pp. 95-96: Bentwick and Martin, p. 7) the language used in Article 1 (2) was not intended to form any basis on which a province, or other part, of a sovereign independent State could claim to secede from that State, or to form the basis for immediate demands for independence on the part of peoples who had not yet attained a full measure of self-government. Nor has Article 73 of the Charter created, as is sometimes alleged, a "right" of self-determination for territories which have not yet achieved a full measure of self-government, since although its provisions are entirely compatible with the concept of self-determination, it relates to the objectives to be pursued by States administering such territories and does not purport to create, in this or any other respect, any enforceable rights.

#### Conclusions

To speak of a "right" of self-determination implies that regardless of circumstances, any group of "peoples" may at any time assert their independence, and ignores the fact which, as has already been seen, was recognized by those who drew up the United Nations Charter, that the two concepts enshrined in the principle now under consideration are complementary parts of one standard of conduct. If a "right" of self-determination were held to exist it could be invoked in circumstances in which it would be in conflict with other concepts enshrined in the Charter. It could, for instance, be held to authorize the secession of a province or other part of the territory of a sovereign independent State, e.g. the secession of Wales from the United Kingdom, or the secession from the United States of America of one of its constituent States. It could also be held to authorize claims to independence by a particular racial or ethnic group in a particular territory, or to justify, on the basis of an alleged expression of the popular will, claims to annexation of a certain territory or territories.

In the opinion of Her Majesty's Government, although the principle of self-determination is a formative principle of great potency, it is not capable of sufficiently exact definition in relation to particular circumstances to amount to

a legal right, and it is not recognized as such either by the Charter of the United Nations or by customary international law.

It must also, as emphasized above, be considered in the context of other relevant provisions of the Charter and, in particular, as part of a wider principle which recognizes the concept of sovereign equality of States as well as the concept of self-determination.

-----