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1966 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held at Headquarters, New York,
on Monday, 11 April 1966, at 11.15 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. KRISHNA RAO	(India)
<u>Rapporteur:</u>	Mr. RIPHAGEN	Netherlands
<u>Members:</u>	Mr. MAMERI)	Algeria
	Mr. BENZITOUNI)	
	Mr. GOÑI DEMARCHI	Argentina
	Sir Kenneth BAILEY	Australia
	U BA THAUNG	Burma
	Mr. ENGO	Cameroon
	Mr. MILLER	Canada
	Mr. ALBONICO)	Chile
	Mr. ILLANES)	
	Mr. PECHOTA)	Czechoslovakia
	Mr. POTOČNY)	
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MONOD	France
	Mr. VANDERPUYE	Ghana
	Mr. ROHRMOSER	Guatemala
	Mr. THERATIL)	India
	Mr. S.N. SINHA)	
	Mr. ARANGIO RUIZ	Italy
	Mr. HATANO	Japan
	Mr. BHOI	Kenya
	Mr. RAKOTONDRAINIBE	Madagascar
	Mr. MERCADO	Mexico
	Mr. ODOGWU	Nigeria
	Mr. WYZNER)	Poland
	Mr. OLSZOWKA)	
	Mr. BOLINTINEANU	Romania
	Baron RAPPE	Sweden
	Mr. NACHABE	Syria
	Mr. ILYIN	Union of Soviet Socialist Republics
	Mr. ABCUL-NASR	United Arab Republic
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland

PRESENT (continued):

<u>Members</u> (continued):	Mr. NABRIT)	United States of America
	Mr. HARGROVE)	
	Mr. MOLINA)	Venezuela
	Mr. CARRASQUERO)	
	Mr. SAHOVIC	Yugoslavia
<u>Secretariat:</u>	Mr. BAQUINIAN	Secretary of the Committee

CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2103 (XX) A AND B OF 20 DECEMBER 1965, OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

(ii) CONSIDERATION OF THE THREE PRINCIPLES SET FORTH IN PARAGRAPH 5 OF GENERAL ASSEMBLY RESOLUTION 1966 (XVIII)

(b) THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES
(A/AC.125/L.16 and L.31) (continued)

1. Mr. BHOI (Kenya), introducing the ten-Power proposal (A/AC.125/L.31), said that the principle of equal rights and self-determination of peoples was of paramount importance in the present era of decolonization. It was the ultimate goal of countries struggling against colonialism and exploitation and was founded on the sacrifices made by subjugated peoples whose desire to live in self-respect and freedom had prevailed against repression and expansionism. To formerly subject peoples and territories self-determination represented the assertion of sovereignty, political independence and territorial integrity and the absence of external intervention. It was also the aspiration of those who were still under colonial domination in Africa and in other parts of the world. In South Africa a minority regime was still in power because of the connivance of those who tacitly supported colonialism; in Rhodesia, a white minority had been permitted to assert its authority over the majority by default; in the Portuguese Territories in Africa the colonialist Powers were still flouting international opinion and the most elementary concepts of justice and civilized behaviour. Since such situations still existed, the international community could not evade its duty to liberate colonized territories through the implementation of the principle of self-determination.

2. Historically, the principle had had a chequered career. After the First World War, it had been used as an instrument of policy and self-determination had been advocated; for only some of the territories gained from the vanquished; under the League of Nations system, the concept of mandates had also covered only a limited number of territories. Subsequently, however, the scope of the principle had been broadened in numerous declarations, treaties and legal texts. It had become generally recognized that the subjection of peoples to alien subjugation constituted a denial of fundamental human rights and that the principle of self-determination should be promoted in the interests of international peace and co-operation, the protection of human rights and, in particular, the inalienable right of peoples to govern themselves in freedom.

3. Within the United Nations, the principle had been given the status of a legal norm and had ceased to be an instrument of international policy. Article 1 (2) of the Charter enunciated the principle which was subsequently developed in Article 73. Moreover, the principle was also set forth in detail in the Declaration on the Granting of Independence to Colonial Countries and Peoples.

4. It was on that Declaration that the ten-Power proposal (A/AC.125/L.31) was based. Paragraph 1 of the proposal contained a general enunciation of the principle, while paragraph 2 outlined its constituent elements. Paragraph 2 (a) was intended to convey the idea that any violation of the principle was a violation of international law. Paragraph 2 (b) expressed the conviction that colonialism should be eliminated not only through international action but also by an express recognition of the right of self-defence of oppressed peoples. Moreover, if repression, denials of justice and violations of human rights were allowed to continue, if international institutions continued to be paralysed by procedural dilemmas, if economic interests continued to prevail over justice and if colonial sympathizers continued to pay mere lip-service to the principle of self-determination, then the genuine advocates of that principle should be permitted to render assistance to those who were deprived of their legitimate rights. Paragraph 2 (c) was intended to counter the traditional colonialist practice of "divide and rule". The arbitrary fragmentation of countries which had been carried out as a result of the Treaty of Berlin in 1885, under which the fate of the African continent had been decided in Europe with scant respect for the interests of the peoples concerned, must never be repeated. The provisions of paragraph 2 (d) were self-explanatory. With regard to paragraph 2 (e), his delegation had often expressed its conviction that colonial territories could not be treated as integral parts of the territory of the metropolitan Power particularly since colonized peoples certainly did not enjoy the same rights as the citizens of colonial Powers.

5. Mr. CARRASQUERO (Venezuela) said that one of the most fundamental of the philosophical principles developed by man during the course of history was that of freedom. As a result of an irreversible historical process, the right to freedom was no longer reserved to particular peoples. The contemporary international community had identified itself with the struggle of all men for freedom. The principle of self-determination was a corner-stone of the right to freedom, and the authors of the United Nations Charter had accordingly included in Article 1 (2) and Article 55 references to the principle of self-determination of peoples. The principle was not

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really a new one, however; it had been one of the concerns of those who had first begun to formulate the basic principles which today governed international relations.

6. The principle of self-determination contained legal, political and ethical elements and its formulation therefore presented a complex problem. It meant the right of peoples to choose their own future, their own form of government, political goals, economic system and cultural and philosophical programmes, free from direct or indirect, internal or external pressure. However, the right to self-determination also implied respect for the right of other peoples to self-determination, and the existence of a balance between that right and the duty of nations to live together in harmony. Nor could a people be said to have exercised self-determination as long as it remained under the yoke of colonialism, nor, as was frequent in the modern world, when it was subjected to the control of regimes which prevented its full exercise of the right to choose its own political, social, economic and cultural system through universal suffrage.

7. In the contemporary world, the principle of self-determination had been applied to the problem of decolonization, to which the United Nations had devoted special attention, as evidenced by General Assembly resolution 1514 (XV) and by the work carried out by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. In that Committee and in the General Assembly, Venezuela had given its unswerving support to the peoples under the colonial system in their struggle for independence. No political, economic or strategic considerations could justify the continuance of the colonial system today, and there would be no peace in the world until its last vestiges disappeared.

8. Elements could be found in resolution 1514 (XV) which might form the basis for a formulation of the principle under discussion. Firstly, all peoples had an inalienable right to self-determination. Secondly, colonialism constituted the denial of the right of self-determination, and ran counter to the United Nations ideal of universal peace. The second preambular paragraph of resolution 1514 (XV) reflected Article 55 of the Charter, which might provide a good basis for an agreement.

9. Lastly, he wished to stress the two aspects of the principle of self-determination, both equally important in the eyes of his delegation. The first aspect was the right of peoples to independence; the second was the right of peoples to choose their own political, economic and social system on the basis of repeated

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consultations of the popular will. The principle of self-determination could be undermined if a people which attained its independence was deprived of self-determination in the domestic sphere.

10. Mr. MONOD (France) said that the principle of self-determination of peoples had formed part of the political philosophy of the international community since the French revolution of 1789, though during the nineteenth and early twentieth centuries it had tended to be interpreted differently depending on who invoked it. It had found expression in the struggle of European national minorities for independence. The term itself dated from the time of the Treaty of Versailles; although the term did not appear in the Treaty itself, the principle had inspired the great changes then made in the political map of Europe. The principle had been abusively invoked by totalitarian Powers to justify annexation; however, it had reappeared with the downfall of those Powers. In the United Nations Charter the principle had been included in Article 1 (2). It was clear from that provision that the principle of equal rights and self-determination of peoples was one of the basic ideals constituting the *raison d'être* of the Organization, and one of the "common ends" mentioned in Article 1 (4). Article 55 again mentioned the principle of equal rights and self-determination of peoples, in connexion with international economic and social co-operation; the assumption underlying that Article was that the principle could become a reality only if higher living standards were promoted, international problems solved and human rights respected. Article 56 contained a pledge by Members to join in the effort to achieve the "common ends" set forth in Article 1, and in particular equal rights and self-determination for all peoples.
11. The analysis of the principle thus presented no difficulty as long as it was looked upon as a goal of the United Nations. The situation was different when one sought to define the ensuing rights and obligations of individual Members, and especially of the entities referred to in Article 1 (2) as "nations" and "peoples". He would note in passing that, in the view of his delegation, the principle of self-determination was perhaps implicit in the provisions of Article 73 - although that might be controversial - but those provisions did not allow any deductions to be made concerning the duties of Member States, as far as the general application of the principle was concerned.
12. With regard to the rights which could be invoked by "nations" and "peoples", the documents of Dumbarton Oaks and of San Francisco were hardly conclusive. The question arose whether the Charter should be understood as proclaiming the existence

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Of a permanent and universal right of self-determination for nations and peoples, including even communities within sovereign States which had existed for a long time. If that question was answered in the affirmative, other questions arose: to whom did the right belong, against whom could it be invoked, what were the necessary conditions for its exercise and how could it be determined whether or not the right had been exercised?

13. The French delegation considered that any definition of the principle of self-determination should deal with those questions in order to avoid introducing uncertainty in international relations at the expense of respect for the principle itself. For example, it must be possible to determine whether the principle applied to populations situated within the territory of existing States. Some delegations which had taken part in the debate seemed to consider that the right of secession was a corollary of the right of self-determination. It was at least doubtful whether the right of secession existed as part of the lex lata; moreover, secession supported or encouraged by other States would surely be in open contradiction with respect for territorial integrity, which was basic to the principle of sovereign equality.

14. There was a tendency to identify the accession to independence of previously dependent peoples with the principle of self-determination. The latter principle was naturally an essential aspect of that movement, but the two notions were not legally identical, for self-determination was much wider in scope. Even after the process frequently described as "decolonization" was completed, the principle of self-determination of peoples would remain valid as long as States, nations and peoples existed. It was that general and permanent principle which the Committee had been asked to define, and not merely its application to contemporary events.

15. He noted that the two proposals before the Committee (A/AC.125/L.16 and L.31) did not deal with the principle of self-determination in general. If the Committee came to the conclusion that the principle of self-determination was a principle of international law - which the sponsors of the two proposals clearly believed to be the case - it would seem to be the Committee's duty to study and define the principle as such. Before one could lay down the particular obligations of States in pursuance of the principle it seemed important to define the principle itself.

16. It seemed to his delegation that the time available to the Committee was not sufficient to allow it to reach considered conclusions on that point. In view of

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the amount of time which had been required for the discussion of principles A, B, C and D, it was hardly reasonable to suppose that a satisfactory formulation of the principle of self-determination could be found in ten days. He hoped that the Committee would agree with that view; naturally, however, his delegation was ready to study any proposal which would take into account the importance of not sacrificing a serious definition of the principle to considerations of time and urgency.

17. Mr. WYZNER (Poland) said that the principle of equal rights and self-determination of peoples was a fundamental principle of contemporary international law binding on all States. Unfortunately, it had not been observed by some States, and certain peoples were still deprived of freedom to exercise their right to self-determination and independence. The Special Committee should therefore formulate principle F as comprehensively and unequivocally as possible.

18. The formulation of the principle should be based on the United Nations Charter and on other documents developing and implementing the principle, in particular, the Declaration on the Granting of Independence to Colonial Countries and Peoples. As set out in Article 1 (2) of the Charter, the principle was composed of two equally important and closely interconnected elements - equal rights and self-determination. According to the rule of equal rights, no nation had a right to impose its will upon another, since that would result in legal inequality and oppression. According to the rule of self-determination, no nation had a right to impose its will upon another nation in matters concerning the political independence of the latter. The provisions of the Charter concerning colonial territories, namely, Chapters XI, XII and XIII, should be interpreted in that spirit. The reference to "other appropriate measures to strengthen universal peace" in Article 1 (2) of the Charter showed that the drafters had intended to make the principle of equal rights and self-determination of peoples one of the most important in contemporary international law. Unquestionably, strict observance of that principle was a fundamental means of strengthening universal peace and one of the prerequisites for achieving peaceful and friendly relations in the international community.

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19. The obligations arising from the United Nations Charter had been developed in the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly had provided that immediate steps should be taken, in territories which had not yet attained independence, to transfer all powers to the peoples of those territories. The General Assembly had stated unequivocally that the making of any conditions or reservations regarding such a transfer was unlawful, thus excluding the imposition of political, military or economic servitudes on former dependent territories. In the Declaration the General Assembly had also rejected all pretexts for prolonging colonial rule which were based on alleged "inadequacy of political, economic, social or educational preparedness". It had ordered that the steps to transfer powers to the peoples of the territories should be taken "in accordance with their freely expressed will and desire", and had specified that "all armed action or repressive measures" directed against dependent peoples were forbidden. It had also declared that there should be no distinction as to race, sex, language or religion both in respect of the principle of equal rights and self-determination of all peoples and in respect of human rights. It had thereby recognized the universal character of the right of nations to decide without delay concerning their own destiny. In its resolution 2105 (XX), the General Assembly had reaffirmed the legal obligation to implement the provisions of the Declaration, had urged the immediate and full application of the Declaration to all territories which had not yet attained independence, and had deplored the refusal of certain colonial Powers to fulfil their obligations in that respect.

20. A clear formulation of principle F should serve as an additional means of compelling the refractory colonial Powers to fulfil their obligations and to put a speedy and unconditional end to colonialism in all its forms and manifestations. Accordingly, his delegation supported the Czechoslovak proposal (A/AC.125/L.16, section VI), which offered a consistent legal statement of the principle. In his delegation's view, the formulation should include a condemnation of racial discrimination in all its forms and manifestations, a reaffirmation of the full sovereignty of peoples over their natural resources, and an assertion of the

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inalienable right of peoples to carry on, by any means whatsoever, their struggle for liberation from colonial domination. The ten-Power proposal (A/AC.125/L.31) contained an interesting statement of that proposition and some other ideas which should be helpful to the Special Committee.

21. As the colonial empires - the classic examples of colonialism - had tended to disappear or to shrink, the vestiges of colonialism, frequently found in areas of strategic importance, had assumed a somewhat unorthodox character. One form of the new unorthodox colonialism, represented by the South African régime with its inhuman policy of apartheid and by the white minority rule in Southern Rhodesia, was still more unlawful than classic colonialism, since it contravened not only rules of international law but also widely accepted constitutional rules by subjugating the will of the majority to that of the minority. The emergence of those new forms of colonialism made it essential that the Special Committee should draw up a very clear statement of principle F. The French representative's argument that not all of the statements in the two proposals before the Committee could be found in the Charter was, in his delegation's view, irrelevant, particularly in view of the clear interpretation of the Charter provisions contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Special Committee should strive to find new, clear, comprehensive formulations to deal with the vicious new forms of colonialism. Poland, which had itself suffered for many years from foreign domination and loss of statehood, whole-heartedly supported the just struggle of the peoples of Africa, Asia and Latin America for full self-determination and independence, and accordingly approved the sound ideas contained in both proposals before the Special Committee.

22. Mr. NACHABE (Syria) recalled that at the San Francisco Conference Committee I, Commission I, had held that the Charter could not be amplified to include all major purposes and principles that covered international behaviour, but should include only the basic ones, which, by virtue of their being basic, could and should make it possible for the Organization and its Members to draw from them, whenever necessary, their corollaries and implications (Documents of the United Nations Conference on International Organization, vol. 6, p. 18). The

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Special Committee, in its task of ensuring the progressive development and more effective application of the principles of peaceful coexistence in accordance with the Charter, was attempting to deduce the corollaries from the basic principles, just as the drafters of the Charter had anticipated.

23. Those corollaries would not be complete unless they reflected the changes which had occurred in international life since the adoption of the Charter - changes which had marked the progress of the international community in political, economic and social matters, which had been embodied in the decisions of many conferences and organizations, and which had been confirmed by the United Nations in many resolutions. Accordingly, his delegation approached the consideration of all the principles before the Special Committee, and in particular principle F, from the standpoint that they should be enriched by all the advances of the past twenty years.

24. The United Nations Charter, in Article 1 (2) and Article 55, first paragraph, rightly considered the principle of equal rights and self-determination of peoples the foundation of friendly relations among States. The principle had also been reaffirmed by, inter alia, the Bandung Declaration, the Belgrade Declaration, the Charter of the Organization of African Unity, the Cairo Declaration, and General Assembly resolutions 1514 (XV) and 2131 (XX), paragraph 6.

25. His delegation considered that the formulation of principle F should contain the following essential elements: first, a clear statement of the right of peoples to self-determination and their free choice of political, economic and social systems; second, a condemnation of colonialism and racial discrimination in all their forms and manifestations and an affirmation of the necessity of putting an end to them; third, a prohibition of the use of force to deprive peoples of their national identity or to keep them under colonial domination, for Article 73 (a) of the United Nations Charter referred to the protection of the inhabitants of the Non-Self-Governing Territories against "abuses", and there was no more flagrant abuse than the forcible repression of the national liberation of peoples; fourth, a statement deploring any action aimed at the partial or total disruption of the national unity and the territorial integrity of another country, such action having been declared to be incompatible with the purposes and

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principles of the Charter of the United Nations in General Assembly resolution 1514 (XV); fifth, an assertion of the right of peoples to oppose such actions by resorting to their inherent right of self defence; and sixth, a declaration that the territories still under colonial domination could not be considered parts of the territory of the colonial Powers. His delegation had, therefore, joined in sponsoring the ten-Power proposal (A/AC.125/L.31).

26. Mr. ODOGWU (Nigeria) said that principle F was one of the most important before the Committee; the subjugation and exploitation of peoples was not only contrary to reason and law but was also scandalous and immoral. His delegation recognized that the main purpose of the principle had already been stated in Article 1 (2) of the Charter of the United Nations in General Assembly resolutions and elsewhere. However, it also considered the principle to be a corollary of the principle of the sovereign equality of States, which had been affirmed in many international instruments. That aspect of the matter had not presented any difficulty in the Committee since, at least juridically, members did recognize the principle of the sovereign equality of States.

27. It had, however, been argued that the term "peoples", as used in the Charter, was ambiguous and that the drafters of the Charter had not intended to make provision for entities other than States. In his delegation's view that argument was untenable with regard to the principle of self-determination. Article 1 (2) of the Charter was not at all ambiguous: the term "nation" used in that text could be defined as applying to a people which possessed the same customs, religion and language but which was not politically independent. If Article 1 (2) were viewed in that light, it became quite clear that the intended beneficiaries of the principle of self-determination were not sovereign States as such but peoples and territories still under colonial domination.

28. One aspect of the ten-Power proposal (A/AC.125/L.31) disturbed his delegation, namely, the fact that the majority of its sponsors had been the victims of colonialism in one form or another and that most of them were African and Asian States. That might help to foster the erroneous view that colonialism only existed in Africa and Asia.

(Mr. Odogwu, Nigeria)

29. Paragraph 1 of the ten-Power proposal enunciated the principle of equal rights and self-determination of peoples. The right of peoples to choose freely their political, economic and social systems, to pursue their development and to be free from intervention or intimidation was implicit in the words "the exercise of their full sovereignty". Paragraph 2 was the logical consequence of paragraph 1. Sub-paragraph 2 (a) was self-explanatory: both those who had dominated and those who had been dominated recognized that colonialism in all its forms was contrary to the spirit of the Charter and a violation of international law. With regard to sub-paragraphs (b) and (c), he recalled that the representative of Madagascar had reminded the Committee of the failure of the world at large to rally together when solidarity was most needed. His country had repeatedly expressed the view that its own independence was meaningless so long as other peoples still remained under foreign domination and its avowed policy was to give material assistance to peoples under such domination. Sub-paragraph (d) reflected the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Sub-paragraph (e) took up the provisions of paragraph 7 of the ten-Power proposal on principle A (A/AC.125/L.21); in introducing that proposal the Indian representative had indicated that the provisions of that paragraph should apply mutatis mutandis to other principles in so far as they related to colonial territories.

The meeting rose at 12.45 p.m.