

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTEENTH MEETING

held on Friday, 10 April 1970, at 3.30 p.m.

Chairman: Mr. GONZÁLEZ GÁLVEZ Mexico

COMPLETION OF THE SPECIAL COMMITTEE'S WORK; IN THE LIGHT OF THE DEBATE WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE TWENTY-FOURTH AND PREVIOUS SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964, 1966, 1967, 1968 and 1969 SESSIONS OF THE SPECIAL COMMITTEE, BY ENDEAVOURING TO RESOLVE, IN THE LIGHT OF GENERAL ASSEMBLY RESOLUTION 2327 (XXII), THE REMAINING QUESTIONS RELATING TO THE FORMULATION OF THE SEVEN PRINCIPLES (GENERAL ASSEMBLY RESOLUTION 2533 (XXIV), PARA. 4) (agenda item 6) (A/7619, A/AC.125/L.80) (resumed from the 111th meeting)

The CHAIRMAN said that, since the work of the Special Committee largely consisted of negotiations between restricted groups of members, it was important to hold plenary meetings from time to time so that all members might be kept informed of the progress of the negotiations.

He invited all delegations to participate in the Drafting Committee's work.

Mr. OWADA (Japan), Chairman of the Drafting Committee, presenting a progress report on what had so far been achieved in the Drafting Committee, said that agreement had been reached on some points concerning the principle of equal rights and self-determination of peoples. The first reading of points I to X had been completed and at the same time informal consultations had been held, the results of which had been reported to the Drafting Committee at its meeting that morning. Some texts had been approved.

The Drafting Committee had decided that point I, which should contain a statement of a general character, ought to be formulated in the light of the outcome of the discussions on other points; work on it had accordingly been suspended.

Points II and III had been considered together because of their inter-related elements. No final agreement had been reached on the language because of the difficulty over the reference to colonialism in point III.

Agreement had been reached on a text for point IV reading:

"The establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people, constitute modes of implementing the right of self-determination by that people".

That text was close to the language suggested during the earlier informal consultations in Geneva, with some modifications, but the drafting could be further improved.

Agreement had not been reached on points V and VI.

Point VII had been discussed in the informal consultations and agreement had been reached on the following text, subject to certain conditions:

"The territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the State administering it; and such separate and distinct status shall exist only until the people of the colony or the non-self-governing territory have exercised their right to self-determination (in accordance with the Charter of the United Nations and particularly its purposes and principles)".

That text had been accepted in the Drafting Committee on condition that the words in parenthesis were retained and that reference was made in the preamble to the relevant General Assembly resolutions.

The Drafting Committee had agreed to defer consideration of point VIII until agreement had been reached on other points.

Points IX and X had been taken together and the possibility of combining them had been explored. The matter was still unsettled. They had been combined in the Italian proposal (A/AC.125/L.80). Some delegations were generally in favour of a safeguard on the lines of that proposed in the Italian text, without prejudice to the principle of equal rights and self-determination. Points IX and X were still under discussion.

Mr. ALLAF (Syria) said that he agreed with most of what had been said by the Chairman of the Drafting Committee except as regards two points. Not all the decisions emanating from the informal consultations had been endorsed by the Drafting Committee.

No agreement had yet been reached on points IX and X and not all delegations favoured the inclusion of a safeguarding clause. For example, his own delegation thought it unnecessary.

Mr. OWADA (Japan), Chairman of the Drafting Committee, said he agreed that the Drafting Committee had accepted some texts devised in the informal consultations and on other points had noted the progress made. No final and formal decision had been reached and a number of points remained outstanding.

He had used the word "generally" to describe the view of some delegations concerning the safeguard clause in points IX and X advisedly.

The CHAIRMAN said he could confirm that the Drafting Committee had taken no final decision on the points under discussion but no objection had been raised to the texts submitted to it that morning. He hoped it would not be necessary to go back on those texts.

Mr. ALLAF (Syria) said that his understanding of the position still differed from that of the Chairmen of the Drafting Committee and the Special Committee. The Drafting Committee had not been asked to decide anything, nor had it been stated at its meeting that anything had been approved. Consequently, the question of raising objections had not arisen. Had it done so, the comments he had just made would have been voiced in the Drafting Committee.

Mr. CRISTESCU (Romania) said that his delegation was in favour of the text for point II, but considered that it should be more precise and should stipulate that all States should respect strictly the right to self-determination of peoples.

Point III should contain a list of acts which were violations of the principle of equal rights, such subjugation, foreign exploitation and colonialism, and should indicate that they were violations of international law and an obstacle to peace.

The text proposed for point IV was worthy of careful study.

Point VII should make clear that the separate and distinct status of a territory was of an essential character which was ended by the exercise of the right of self-determination in accordance with the methods set out in point IV.

With regard to the Italian proposal, the first sentence was open to differing interpretations. A safeguarding clause against the right to self-determination was unacceptable because the right was inalienable. Presumably the purpose of the second sentence was to prevent secession. The internal aspect of secession was regulated by constitutional law and was no concern of the Special Committee. Clauses concerning the territorial integrity of States had already been incorporated in principles approved by the Special Committee at an earlier stage. His delegation could not support the safeguarding clause in the Italian proposal since it would detract from the force of other principles already adopted.

Mr. ARANGIO-RUIZ (Italy) said that his delegation attached great importance to the inclusion of a safeguarding clause in points IX and X.

Mr. ROSENSTOCK (United States of America) said that he fully agreed with what the Chairmen of the Drafting Committee and the Special Committee had said about the results of the Drafting Committee's work. As far as the substance of the principle of self-determination was concerned, his delegation would make no observations at the present juncture, but that should not be taken as implying its agreement on any point involved in the formulation of that principle.

Mrs. SLÁMOVÁ (Czechoslovakia) said that her delegation had been one of the first to promote the codification of the principle of peaceful co-existence. It hoped that the Special Committee would complete its work at the present session. The Committee had certainly made an energetic start on its task.

With regard to the principle of self-determination, the formulation should express the rule, to put it generally, that all peoples had equal rights, that they had the right freely to determine their economic, social and cultural development, and that every State had a duty to assist in the implementation of those rights, which were laid down in the Charter and in many General Assembly and Security Council resolutions. The disagreement in the Committee did not concern the substance of those rights but their implementation.

There was disagreement over the formulation of point III of the principle because of the proposal to include the term "colonialism". The inclusion of that word was unacceptable to some delegations, but colonialism was the main form of oppression of peoples. In her delegation's view, to refrain from using it would amount to a refusal to face facts and would enable colonialism to escape the purview of the draft declaration.

With regard to points V and VI, the principle should be formulated very precisely. It should show that colonial peoples were entitled to struggle for their freedom and to seek assistance in their struggle. Czechoslovakia supported those delegations which favoured the inclusion of a statement to that effect.

With regard to point VII, the draft declaration should make it clear that, in accordance with international law, colonial territories could not be considered an integral part of the territory of the administering Power.

In a spirit of compromise, her delegation could agree to the deletion of point VIII provided that certain of its features were included in the draft declaration elsewhere. As to points IX and X, Czechoslovakia shared the widespread view that point X should be dropped. Point IX served little purpose; it did not clarify the formulation of the principle and could hamper its implementation. Her delegation accordingly welcomed the compromise text proposed by the Italian delegation for points IX and X.

Mr. BIERZANEK (Poland) said that the question arose whether the principle of self-determination was to be formulated primarily in terms of the right of peoples to self-determination or in terms of the obligations of States with respect to that right. For Poland, there was a clear distinction between the rights and interests of peoples and those of States; in the past, Poland had been in a semi-colonial position and the Polish people had struggled for independence without there having been a Polish State. His delegation considered that the principle of self-determination should be formulated in such a way as to leave no doubt that self-determination was an inalienable right of peoples which had its corollary in the obligations of States. The formulation should also be such as to dispel once and for all the old-fashioned view of some States, and of jurists like Professor Sauer, of West Germany, that peoples had no rights, that they were merely the beneficiaries of the duty of protection incumbent on States, and that they enjoyed the benefits of rules of international law only indirectly.

The Committee's task was not merely to give an academic interpretation of the provisions of the Charter, but, in conformity with General Assembly resolution 1966 (XVIII), dated 16 December 1963, to be guided by the practice of the United Nations

and of States and the comments of Governments - in other words, by the development in views which had taken place since the signing of the Charter. That evolution was reflected, inter alia, in General Assembly resolutions. As far as the principle of self-determination was concerned, it was important to note the Declaration on the granting of independence to colonial countries and peoples. Moreover, the General Assembly had recently passed resolutions 2383 (XXIII) of 7 November 1968, 2395 (XXIII) of 29 November 1968, 2396 (XXIII) of 2 December 1968, 2446 (XXIII) of 19 December 1968 and 2597 (XXIV) of 16 December 1969, all of which contained wording that lent support to the legal concept of the right of colonial peoples to self-determination and the legitimacy of their armed struggle when that right was denied. The old-fashioned view, that the Charter and contemporary international law attributed rights to and imposed obligations only on States and that peoples were merely the beneficiaries of those obligations, was inconsistent with recent United Nations practice as embodied in General Assembly resolutions. The notion of the right of peoples, as distinct from the right of States, accorded better with the legal philosophy of the modern world, and it was therefore the latter notion, and not the traditional one, which should be expressed in the draft declaration. Even pragmatically, it would be short-sighted to expect the General Assembly to adopt a draft declaration which was inconsistent with its previous practice. The General Assembly would consider it retrograde not to formulate the principle of self-determination in progressive terms. He therefore appealed to those delegations which were opposed to such a formulation to reconsider their position.

Mr. ENGO (Cameroon) said that the purpose of the present meeting was to hear an interim report on progress in the Drafting Committee. In the past, it had been the Special Committee's practice at plenary meetings simply to take note of such interim reports, with delegations confining their comments to observations which would assist the Drafting Committee's work. Since time was short, he appealed to delegations not to depart from that practice. Discussion in plenary meetings should be restricted to general matters on which the Drafting Committee needed guidance. There was ample scope for more elaborate comment in the earlier stages of the procedure which the Special Committee had adopted for its work on the draft declaration.

Mr. ARANGIO-RUIZ (Italy) said that, although his delegation had not intended to speak on any question of wording, he now found it desirable to reply at least to two of the points made by the Romanian delegation.

First, he could not agree that the problem covered by the safeguarding clause contained in the second sentence of the Italian proposal was one of constitutional law and not of international law. Secondly, he could not agree that the problem was covered by the general safeguards regarding territorial integrity contained in the wording of other principles. On both points he maintained that the problem arose because of the special nature of the principle of self-determination of peoples. It sprang from the fact that the beneficiaries of the principle were not States but peoples - a totally different situation from that found in the other principles, which did relate to States. It would clearly be absurd to talk about the self-determination of States. Such a proposition would render the principle void of meaning: the only entities that would ultimately benefit from it would be semi-sovereign States and component units of a federation in cases where those component units were described as "States", as in the United States of America and the United States of Mexico.

Once it was clear that it was peoples that were the beneficiaries of the principle of self-determination, it followed logically that provision must be made to safeguard the territorial integrity and political unity of States. And it was a problem that had to be dealt with at the international level. Provisions of constitutional law could not protect the territorial integrity or political unity of a State at that level, which was precisely the level at which the declaration would be made. In the absence of such a safeguard in international law, it would be possible to invoke the principle of self-determination in order to destroy the territorial integrity or undermine the political unity of a State.

The claim that the territorial integrity of States was safeguarded under the principles concerning the non-use of force and non-intervention was not enough. Since the principle of equal rights and self-determination conferred rights on peoples and not on States, it would be very easy to disrupt the political integrity of a State on the basis of that principle. The term "people" was not defined and it would be possible to invoke the principle of self-determination on behalf of any group; that possibility rendered an ad hoc safeguard, such as the one included in the Italian proposal, absolutely necessary.

He was glad to note that the Romanian delegation agreed with him at least on the substance and basic purpose of the Italian proposal and he was confident that an appropriate solution would eventually be found.

Mr. FOURNIER (France) said he was glad to note that appreciable progress had been made in the work of the Drafting Committee. His delegation believed that the principle of self-determination should be formulated on broadly the same lines as the other principles. With regard to the formulation itself, he would prefer not to speak of a majority view and a minority view since every effort was being made to reach, in a spirit of compromise, a formula capable of general acceptance. The principle was a vitally important one and was given pride of place in the United Nations Charter, which required its observance by States in their relations with peoples. It conferred rights upon peoples under colonial rule.

It was important to bear in mind that a people invoking the principle of self-determination must exhaust all peaceful means of obtaining their rights before resorting to other means.

In his delegation's view, all peoples had an equal right to self-determination and to be delivered from subjugation, whether resulting from a colonial yoke or from foreign domination.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that the Special Committee had grounds for satisfaction at the work which had begun in the Drafting Committee and in the informal consultations. The machinery which had been adopted had proved effective; in a business-like atmosphere, some progress had been made in the very complex task of formulating the principle of self-determination, thanks in large measure to the efforts of the Chairman of the Drafting Committee and the Chairman of the Special Committee itself.

The most important difficulties before the Committee, however, had not yet been overcome. All delegations were aware of the difficulties connected with the policy of certain States, a policy which was objectively in conflict with the main objective of the declaration of principles that the Special Committee was called upon to formulate. He hoped that those difficulties would be overcome as a result of greater efforts, and bearing in mind the appeal by the representative of Cameroon.

The Committee's work must be viewed in the wider context of the general world situation. A generation had now emerged which had not known a world war. It was living, however, in a world that was not at peace. Everyday incidents occurred in the course of which bombs fell on workers in factories and other civilians. Many millions of peoples were fighting with determination for their freedom. In several parts of Africa, peoples were being subjected to slavery and apartheid just because their skin was black. At the same time, certain States were unwilling to take the

necessary measures against the racist régime in the central part of Southern Africa. In Asia, a local but large-scale war was being waged. The scope of that war was extending and it threatened to engulf further countries.

Of course, the work of the Special Committee would not bring those unsatisfactory situations to an end. It would, however, make a significant contribution to the efforts at present being made for a less dangerous world and a more stable peace. The Committee could help in the task of devising measures to improve the United Nations facilities to carry out peace operations in accordance with the Charter. The Committee's work formed part of the whole system of friendly co-operation among peoples, regardless of their social and political systems. In that scheme, each and every link was important and success with one link contributed to success with others. His delegation accordingly attached great importance to the fulfilment of the Committee's work, which not only related to prominent legal principles but also had political implications, since it would contribute to the strengthening of world peace and security.

The Committee now had a chance of completing its work if it made the best possible use of its time, and of presenting to the twenty-fifth session of the General Assembly a well-balanced declaration of principles. His delegation would make the utmost effort to achieve those aims. While adhering steadfastly to the principles themselves, on which no compromise was possible, it was prepared to adopt a flexible approach in order to solve practical questions and reach a consensus.

Mr. SINCLAIR (United Kingdom) said that his delegation had felt that it would not be appropriate to make any comments on the progress report of the Chairman of the Drafting Committee, since it was itself a member of that Committee; it had, moreover, participated in the work of various informal groups, some of which were still conducting negotiations. The Committee, however, had begun a general debate on various elements of the principle of self-determination and he felt it necessary to recall that the United Kingdom position on that principle had already been expressed at previous sessions. That position was reflected in the formulation contained in part VI of the draft declaration submitted by the United Kingdom at the Special Committee's 1967 session (A/AC.125/L.44).<sup>1/</sup>

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<sup>1/</sup> For the text, see Official Records of the General Assembly, Twenty-Second Session, Annexes, agenda item 87, document A/6799, para. 454.



Reference had been made by the Polish representative to a number of General Assembly resolutions which, it should be noted, had not been adopted unanimously. The views of the United Kingdom on those resolutions had been made clear in the General Assembly in the statements by his delegation, including those made in explanation of its vote.

It should be emphasized that those resolutions had not been intended to formulate any general legal principles. They had been directed to particular situations with regard to which the United Kingdom attitude was clear. It was obvious that statements contained in those resolutions could not be generalized and turned into the formal declaration of certain principles. He would remind the Committee that general statements made in other resolutions had been the subject of reservations by certain delegations, including his own.

Mr. MOLINA LINDAETA (Venezuela) said that his delegation had not intended to make any comment either on the form or on the substance of the principle of self-determination. It had not participated in the informal discussions since it felt that an excessive participation could only slow down the process of negotiation. He also felt that the Drafting Committee, because of its reduced membership and its geographical distribution, had a better chance of producing a generally acceptable formula.

In regard to the progress report of the Chairman of the Drafting Committee, his delegation realized the great difficulty of the task facing that Committee. Indeed, the most promising aspect of the present discussion had been the statement by a number of delegations that they were prepared to adopt a flexible attitude; such an attitude should make it possible for some delegations to abandon certain positions of principle which stood in the way of general agreement.

Whatever the method adopted, he had his misgivings about the possibility of completing the Committee's work in the short time still before it. In order to succeed in that aim, the Committee would have to have before it the text of a draft declaration for discussion some ten or twelve days before the scheduled date of conclusion of its session.

His delegation would willingly contribute to the common task of reaching a solution by consensus. At the same time, it did not wish its silence on the points of substance to be misconstrued as implying any approval regarding a number of statements which had been made by other delegations.

The CHAIRMAN said that, at its next meeting, the Drafting Committee would begin consideration of the principle of the non-use of force.

Mr. ROSENSTOCK (United States of America) said he was concerned that a discussion of that principle in the Drafting Committee might have the effect of re-opening some of the issues on which agreement had already been reached in connexion with other principles.

The CHAIRMAN suggested that, for the preamble to the draft declaration, the Committee should adopt a method of work similar to that adopted on other issues. He therefore invited the delegations interested in the draft preamble to notify him and, in due course, he would ask a small number of delegations to prepare a draft.

The meeting rose at 5.40 p.m.