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SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at Headquarters, New York,
on Monday, 26 March 1962, at 11.10 a.m.

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PRESENT:

Chairman:	Mr. JHA	(India)
Members:	Mr. HOOD	Australia
	Mr. KOUN WICK	Cambodia
	Mr. WODAJO	Ethiopia
	Mr. RASGOTRA	India
	Mr. THEODOLI	Italy
	Mr. ANDRIAMAHARO	Madagascar
	Mr. TRAORE	Mali
	Mr. SOLTYSIAK	Poland
	Mr. RIFAI	Syria
	Mr. NGAIZA	Tanganyika
	Mr. Taieb SLIM	Tunisia
	Mr. OBEREMKO	Union of Soviet Socialist Republics
	Mr. CROWE	United Kingdom of Great Britain and Northern Ireland
	Mr. BINGHAM	United States of America
	Mr. VELAZQUEZ	Uruguay
	Mr. SILVA-SUCRE	Venezuela
	Mr. KREACIC	Yugoslavia
Secretariat:	Mr. STAVROPOULOS	Under-Secretary
	Mr. CHACKO	Secretary of the Committee

SOUTHERN RHODESIA: GENERAL ASSEMBLY RESOLUTION 1745 (XVI) (A/AC.109/L.4/Rev.1) (continued)

Mr. CROWE (United Kingdom) said that, to begin with, he must repeat what the United Kingdom representative had said in the Fourth Committee and again in the Special Committee, namely that his delegation did not accept the competence of the United Nations in regard to the matter under discussion. At the tenth meeting of the Special Committee the representative of India had drawn attention to resolutions adopted by the General Assembly in the past which asserted the Assembly's competence in determining whether or not a Territory had attained a full measure of self-government, and had deduced from that that the question of competence had been settled. He felt bound to say in reply that those resolutions did no more than assert the competence of the United Nations and that the United Kingdom did not accept that those assertions were binding. He would not go further into that aspect of the matter but would merely confirm that the policy of his Government on that question of basic principle remained unchanged.

The representative of India had also recalled a statement made by the representative of Ghana in the Fourth Committee, to the effect that the United Kingdom had continued to transmit information on the Gold Coast even after that Territory had achieved internal self-government and that what had been done in the case of the Gold Coast could be done in the case of Southern Rhodesia. The United Kingdom delegation did not agree that the two cases were parallel. The United Kingdom had in certain cases continued to transmit information on Territories after they had achieved internal self-government, because the Governments of those Territories had raised no objection when asked to supply such information and because, since information had been supplied prior to internal self-government, it had seemed natural to continue to transmit information up to the attainment of full independence. Had the local authorities refused to supply the information, the United Kingdom would have been unable to transmit it to the United Nations.

The case of Southern Rhodesia was quite different; it had enjoyed full internal self-government for many years before the Charter had been signed; hence the question whether information should continue to be supplied after the

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attainment of self-government had not arisen. The decision not to include Southern Rhodesia among the Territories in respect of which the United Kingdom proposed to transmit information had not been challenged in 1946, or subsequently until the current session of the General Assembly.

He had been much impressed by the spirit with which most members of the Committee had approached the subject under discussion. Much criticism had been levelled at the United Kingdom Government, but it had been actuated not by malice but by a genuine concern about Southern Rhodesia's future and the interests of its peoples. There had, however, been one exception; the USSR representative had not only failed to grasp the realities of the situation but had apparently not even read the constitutional document which formed the basis of the discussion. His criticisms had shown little regard for reality; for example, he had stated that 29,000 people had been transferred from Zambesi to certain special regions. Firstly, the figure was wrong; secondly, a great dam had been built on the Zambesi River, which would bring enormous benefits to the country, and the people concerned had had to be resettled, even as other peoples would have to be resettled in projects in which the Soviet Union itself was closely interested. He asked whether the USSR representative would have preferred that those people had been left to drown.

He would not go into the history of the transactions with Lobengula. Today it was necessary to deal with a practical situation caused by the explosion of European population and inventiveness which over the past three centuries had led to the development of both Americas, parts of Africa, and Australia, and which had also happened in Asia, where Russian settlers had pushed into many of the lands bordering metropolitan Russia. The Soviet Union had sent and was still sending not thousands but millions of settlers to occupy the lands of the Kazakhs, the Kirghiz and others.

Mr. OBEREMKO (Union of Soviet Socialist Republics), speaking on a point of order, appealed to the Chairman to call to order the United Kingdom representative who should confine his remarks to the question on the Committee's agenda, that of Southern Rhodesia, and refrain from making slanderous attacks on the USSR, no doubt in an attempt to distract attention from the weakness of his case. He pointed out that it was not only the USSR delegation that had criticized the United Kingdom; it had been severely criticized by every member of the Committee except the representatives of other colonial Powers.

The CHAIRMAN appealed to the members of the Committee to confine their remarks to the subject under discussion.

Mr. CROWE (United Kingdom), continuing his statement, said that it was not his purpose to discuss the Soviet Empire and its methods; no doubt the Committee would come to that in due course, nor would he deal in detail with the statements made by the petitioners, since most of their major points would be covered in his explanation. At one point, however, Mr. Nkomo had called into question the good faith of the Secretary of State for Commonwealth Relations. He could not allow that allegation to pass in silence and he would therefore quote from the Secretary of State's speech on the subject in the House of Commons, in which he had dealt with and refuted Mr. Nkomo's statement that the National Democratic Party had not agreed to the report of the Constitutional Conference. The Secretary of State had explained that the phrase in paragraph 18 of the report: "Nevertheless, while maintaining their respective positions, all groups (with the exception of the representatives of the Dominion Party) consider that the scheme outlined below should be introduced" had been chosen by the representatives of the National Democratic Party themselves. In their original draft the sentence had included the further phrase "and that it should be given a fair trial". The Secretary of State had suggested the deletion of that final phrase in order to make matters easier for the representatives of the National Democratic Party. The Secretary of State had realized that the National Democratic Party was not entirely satisfied; they had made it clear from the beginning that they wanted one man, one vote. What they did agree to was that it would be a good thing, not having been able to get what they wanted, for the scheme to be introduced. In a speech made shortly after the end of the Conference, however, Mr. Nkomo had welcomed certain parts of the report and claimed that they would be a stepping-stone to the ultimate goal, but he had also appeared to repudiate the passage on franchise and representation. That proved effectively that there had been agreement. The Secretary of State had emphasized that the representatives of the National Democratic Party were naturally entitled to change their minds, especially since pressure had undoubtedly been brought to bear on them by their followers, but he had protested against the implication of bad faith on his part. He had also quoted a letter from Mr. Silundika, Secretary-General of the National Democratic Party, and a statement by Mr. Mawema, founder of that Party, both of which confirmed that Mr. Nkomo had accepted the constitutional proposals.

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It had become apparent during the debate that some members of the Committee were puzzled about the precise constitutional status of Southern Rhodesia and its relationship with the United Kingdom. Some of the difficulty arose from terminology, but he would remind members that the terminology of the Charter and of General Assembly resolutions was of comparatively recent origin, whereas the constitutional usage of the United Kingdom had been long established. One example of that difficulty was the comment made by the representatives of India and Mali that the expression "Southern Rhodesia is a self-governing colony" was a contradiction in terms. The phrase "self-governing colony" was well known to students of British constitutional history and had played an important part in the evolution of several States now Members of the United Nations. Halsbury's Laws of England pointed out that before the adoption of the Statute of Westminster in 1931, the term "colony" had been used to include any part of Her Majesty's dominions except the British Isles and India and that in Acts passed after that date the term did not include any independent State within the Commonwealth. In British constitutional usage the normal description applied to such Territories as Canada, Australia and New Zealand, at the time when they had enjoyed responsible government but not independence, had been "self-governing colony". It had been only in 1907 that Canada, Australia and New Zealand had been named "self-governing Dominions". The Imperial Government's reserve powers had been gradually relinquished to the self-governing colonies, with the exception of powers in relation to constitutional amendments and external affairs, where relaxation of imperial control had proceeded more slowly. By 1926 it had been possible to declare that the United Kingdom and the Dominions were "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".

He did not intend to suggest that Southern Rhodesia enjoyed equal status with the sovereign independent States which were full members of the Commonwealth. His purpose was to explain that the term "self-governing colony" had a meaning and that, as the representative of India had himself noted, Southern Rhodesia immediately before the establishment of the Federation of Rhodesia and Nyasaland had been in the final stage through which the older Dominions had

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passed on their way to Dominion status. What had caused Southern Rhodesia's status to become anomalous was that instead of taking the final step to full independence it had remained in the "twilight zone" between dependence and independence.

He thought he had said enough to demonstrate that Southern Rhodesia's status had not, as some speakers had implied, been specially created to remove it from the ambit of the Charter.

The self-governing colonies or Dominions had continued to assert their rights in the field of external relations and at the end of the 1914-1918 war had secured separate representation at the Peace Conference and had signed the Treaty of Versailles on behalf of their own countries, subsequently becoming original Members of the League of Nations. Nevertheless more than ten years had passed before the last legislative powers of Parliament at Westminster had been surrendered under the Statute of Westminster in 1931. It was relevant to note that Newfoundland, which had been a self-governing Dominion, had not signed the Treaty of Versailles or become a Member of the League of Nations; its external relations had continued to be conducted by the United Kingdom until it had eventually merged with Canada thirty years later. Thus for several years Newfoundland had enjoyed a status of self-government but not independence comparable with that of Southern Rhodesia today. Southern Rhodesia's membership of the international organizations was a recognition of its special status and he could not agree with the representative of India that its participation in the work of any of the international bodies was subject to the authority of the United Kingdom Government.

A further consequence, and a very important one, derived from the fact that Southern Rhodesia's status as a self-governing colony was comparable to that enjoyed by the self-governing Dominions in an earlier stage of their development. As members of the Committee were aware, there was no written British Constitution; precedent and convention played a very important role. Halsbury had pointed out that from the middle of the nineteenth century there had been a convention against Parliament legislating for the self-governing colonies without their consent and that the same convention applied to Southern Rhodesia. From a strictly legal point of view it would be possible for Parliament to revoke the Statute of Westminster or any of the later Acts which recognized the independence of the

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more recent members of the Commonwealth. Such action was, however, unthinkable in practice. The powers of the United Kingdom in respect of Southern Rhodesia were genuinely restricted in a way that was not true of the Non-Self-Governing Territories for whose administration it was responsible, including Malta and British Guiana, to which the representative of Syria had referred at the previous meeting. It might be asked how in that case it came about that Parliament had recently enacted a new Constitution for Southern Rhodesia. In reply he quoted from a statement made in Parliament by the responsible Minister on 8 November 1961, in which he had explained that under the former Constitution the Crown had reserved to itself full power to revoke, alter or amend only twelve of the sixty-four Sections and that the remaining Sections could be amended only by the Legislature of Southern Rhodesia. It would not, therefore, have been practicable to introduce the far-reaching changes which the United Kingdom and the Southern Rhodesians desired by way of further amendment to the existing constitutional document and the Government of Southern Rhodesia had therefore requested that a new Constitution should be contained as a whole in a new document.

He suggested that members of the Committee who spoke of abrogating the present Constitution should give serious consideration to the matter, since otherwise they might be led into advocating courses which were not merely politically unwise but legally impracticable and impossible to implement. The Secretary of State for Commonwealth Relations had said in the House of Commons that, having nearly forty years earlier given a Constitution which was virtually self-governing to Southern Rhodesia, it would be constitutionally improper and impracticable for the United Kingdom, without the consent of Southern Rhodesia, to impose upon it a new constitution. Several delegations had criticized the decision made in 1923 to give the predominately European electorate the choice between full internal self-government and incorporation with the Union of South Africa, without taking into account the wishes of the indigenous population. The attitudes of the various parties concerned would probably be different today, but the fact remained that to grant extensive powers of self-government to those who had been at the time most organized and best able to exercise such powers had been generally held by the standards of the time to be a progressive and liberal move. Whether or not

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it would be so regarded today was an academic question; the fact which he hoped he had demonstrated was that the delegation of powers which had taken place had been real, substantial and for practical purposes irrevocable. That was the situation which must be dealt with at the present time.

He hoped that the Committee would resist the temptation to disregard political realities and to advocate measures which were impracticable in the light of the facts. The considerations he had advanced were not legal points; they were basic elements of the British system of government and could not be simply put aside.

He felt that much of the criticism of the new Constitution was misplaced. If the cirticisms now being made had been made five or even three years earlier they would have been more understandable. At that time the legislature had been wholly European, the electorate almost entirely European and there had been no sign of any change in prospect. There had been a considerable body of discriminatory legislation and no check on the introduction of further discriminatory measures except for a technical power of veto by the United Kingdom Government which had never been effective and was not likely ever to be so. The present situation was very different. As the Secretary of State for Commonwealth Relations had said in the House of Commons, the outstanding feature of the new Constitution was that it provided far-reaching advancement for the Africans with the full consent of the Europeans. Incidentally, the white electors had voted two to one in favour of extending the franchise. Indeed the new Constitution made it certain that power would be transferred steadily to African hands because more Africans would qualify for the vote as they acquired more education and a better economic status. The franchise could not be altered to the detriment of Africans except after a referendum in which African voters would have a veto. Even the less important constitutional provisions, which did not require a referendum, must still be passed by a two-thirds majority of the Legislative Assembly. The Africans had a virtual guarantee of fifteen "B" roll seats. If all those who were qualified registered and exercised their vote they should secure additional "A" roll seats at the first general election and more at subsequent elections. By their influence on the other "A" roll seats, they should

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moreover be able to prevent the election to those seats of European candidates likely to support constitutional amendments detrimental to African interests.

It had been suggested that under the old Constitution consultations had taken place between the United Kingdom Government and the Southern Rhodesian Government before any legislation concerning the United Kingdom reserved powers had been enacted by the Southern Rhodesian Government. Such consultations had, however, been of an entirely informal nature, designed to give the reserved powers some technical meaning short of the purely negative exercise of the veto, which would be an extreme step difficult to justify in view of Southern Rhodesia's constitutional position. The main point, however, was not whether the reserved powers had any value but the fact that the safeguards which replaced them were much more effective. In fact, criticism of existing discriminatory legislation was in itself a judgement of how effective the reserved powers had been in practice. To claim that such legislation flouted the Declaration of Rights suggested that the latter was a better safeguard against similar legislation being enacted in future.

The Declaration of Rights itself did not apply retrospectively, because of the chaotic state of uncertainty that might arise during the period before the Courts could rule on whether or not legislation was consistent with the Declaration. In the meantime, the Southern Rhodesian Government itself was making considerable strides in systematically reviewing all legislation and removing discriminatory features.

The Declaration of Rights in Southern Rhodesia was closely modelled on those of Nigeria and Sierra Leone. It enabled the common man, regardless of race, colour or creed, to appeal to an independent judiciary and even to the Privy Council, the highest Court of the Commonwealth. Such a procedure was more valuable than a veto which might be subject to extraneous political pressures. The new Declaration of Rights applied not only to legislation - as had been the case with the British Government's earlier reserved powers - but also to statutory instruments and even to executive action. Moreover, provision was made under the new Constitution for financing litigation brought by a private person who considered himself aggrieved but could not afford to take his case to court.

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Much more could be said about the positive merits of the new Constitution. His purpose, however, had been to endeavour to dispel the misunderstandings in the Committee.

He appealed to those members of the Committee who had the interests of all the peoples of Southern Rhodesia at heart to ponder carefully on the conclusions which should be drawn from the debate.

The first of them related to the question asked by the General Assembly in resolution 1745 (XVI). He hoped that he had been able to show that Southern Rhodesia was neither completely dependent nor fully independent. The interests of historical accuracy would not be served by attempts to twist the complex facts of the constitutional status of Southern Rhodesia in order to make them conform either with the factors annexed to General Assembly resolution 742 (VIII) or with the principles annexed to General Assembly resolution 1541 (XV). He therefore suggested, as the United States representative had already done, that the Committee should report to the General Assembly that it had been unable to give a clear affirmative or negative answer to the question put to it in resolution 1745 (XVI).

Some members had suggested that in its report to the General Assembly the Committee should not confine itself to answering the question in resolution 1745 (XVI) but should also touch on the substance of some of the matters which had been discussed in the course of the debate, such as the provisions of the new Constitution. He did not pretend that the new Constitution marked the attainment of equal rights for all in every field. He was, however, convinced that it represented a major advance along the path leading to that goal and away from the policies of white supremacy. The leaders of Southern Rhodesia were not advocates of racial supremacy. Despite the fear voiced by the Tanganyikan representative at the eleventh meeting that things in Southern Rhodesia were moving in the wrong direction and that, if they continued to do so, there was a danger of creating another South Africa, the new Constitution was clearly and most emphatically a move away from any policies of apartheid. It marked the beginning of a trend which would surely lead to the Africans playing a leading role in the Government of Southern Rhodesia. Hasty and ill-considered action or decisions by the Special Committee, or by the General Assembly on the basis of conclusions formulated by the former, might delay or even reverse that trend.

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He would urge most strongly that what was vitally necessary was that all the African political parties should encourage their supporters to enrol as voters in the largest possible numbers, and should contest the election and win as many seats as possible. He realized that that was asking them to accept far less than what they considered to be their rights, but it did not mean asking them to sacrifice any of their principles. There seemed to be no good reason for abandoning in Southern Rhodesia a method which had been proved effective in Tanganyika and other Territories formerly under United Kingdom administration, where the local political leaders had contested the elections and had then used their seats in the legislature as a stepping stone to achieve a wider franchise and larger African representation.

The best service which the Committee could perform for the African people of Southern Rhodesia and for their leaders, including Mr. Nkomo, was to urge them to work within the constitutional framework, by contesting the forthcoming elections and establishing themselves in the Southern Rhodesian Legislature. The stage would then be set for the next act. Unless the African leaders took that decision, the future would be dark and fraught with danger.

Although it was easy to talk of patience being exhausted and of force being the only answer, a glance at the Territories formerly under United Kingdom administration, such as Tanganyika, Nigeria and Sierra Leone, showed their history to have been one of negotiation, compromise and, above all, patience. Their story disproved the Marxist theory that colonial rule must end in bloodshed. There was already sufficient violence in the world to make all reasonable men unwilling to do anything that might add to it.

It would be deplorable if, by any ill-considered recommendation, the Committee were to harden opinion and attitudes in Southern Rhodesia and impede the peaceful development of that country. The Committee should refrain from adopting extreme and impractical recommendations the non-fulfilment of which would shatter expectations and might easily lead to violence. It should always bear in mind the fact that it was the task of the United Nations to foster the growth of freedom and peace, and it should be careful to do nothing which might impede or endanger constitutional progress in Southern Rhodesia.

Mr. BINGHAM (United States of America), speaking on a point of order, said that before the Committee took up any specific draft resolution, it should give very serious consideration to the question of whether it was going to proceed by resolution or in some other manner.

His delegation was of the opinion that resolutions were not appropriate and would be contrary to the procedure which had been agreed upon after considerable discussion. The task of the Committee under General Assembly resolution 1654 (XVI) and, with reference to Southern Rhodesia, resolution 1745 (XVI) was to report to the General Assembly. Similarly other Committees, such as the Committee on South West Africa or the Sub-Committee on the Situation in Angola studied the questions entrusted to them, gathered and analysed information and reported their conclusions to the General Assembly.

He was certain that if the General Assembly had intended the Special Committee to take action by adopting its own resolutions with recommendations addressed directly to the Administering Members concerned, the General Assembly would have said so. As it was, an impossible situation would arise if the General Assembly were to disagree with a resolution already approved by the Special Committee which contained recommendations to an Administering Member. At no time during the extensive discussions in the General Assembly that had preceded the establishment of the Special Committee had it been suggested that the Committee should be given authority to go ahead on its own and operate, as it were, as an extension of the General Assembly empowered to act without reference to what the latter might decide at a later date.

Again, it had been the unanimous view of the Committee, as expressed in the summary by the Chairman (A/AC.109/1), that the Committee would try to proceed on the basis of a consensus of opinion and achieve the maximum area of agreement, as was being done in the Committee on the Peaceful Uses of Outer Space. The submission of draft resolutions would, on the contrary, accentuate the differences in the Committee. It was therefore the wrong approach and would not promote the objectives of the Committee.

In the view of his delegation, the best procedure would be for the Chairman, at the end of the discussion, to summarize what had been said, indicate the areas in which there had been agreement and state the different points of view. The

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views of the Committee or of the majority of its members would become known from the Committee's records and report. He was not suggesting that the expression of those views should be deferred until the Committee had prepared its report to the General Assembly, since he appreciated the desire of the members to have their views and the views of the majority set down in an official way for the information of the United Kingdom Government. The desire of the majority in the Committee to influence the United Kingdom Government to take certain action could be achieved quite effectively by the procedure he was suggesting. He felt very strongly, however, that the adoption of resolutions would not have the intended effect of influencing the United Kingdom Government.

He therefore proposed that before the Committee took up any particular draft resolution it should discuss the procedural question of whether it would consider draft resolutions or proceed in some other way.

Mr. NGAISA (Tanganyika), speaking on a point of order, announced that his delegation was now unable to co-sponsor draft resolution A/AC.109/L.4/Rev.1 and would like its name removed from that document.

Mr. OBEREMKO (Union of Soviet Socialist Republics) said that the Committee should proceed with the consideration of the joint draft resolution. The right of delegations to submit resolutions could not be questioned. A draft resolution could be adopted either without a vote, by general agreement, according to the procedure which the Committee was trying to follow, or by a majority vote, if there was no general agreement on the motion.

Mr. WODAJO (Ethiopia) said that according to the United States delegation, the procedure to which the United States representative had referred was the one the Committee had already agreed to. There was some wisdom in that suggestion. He felt that an adjournment of the meeting to allow members to consult each other on the subject would be in the interest of the future work of the Committee. He therefore proposed that the meeting should be adjourned.

The motion for adjournment was adopted by 13 votes to none, with 4 abstentions.

The meeting rose at 12.45 p.m.