

**INTERNATIONAL COURT OF JUSTICE**

**LEGAL CONSEQUENCES OF THE SEPARATION OF THE  
CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965**

**(REQUEST BY THE UNITED NATIONS GENERAL  
ASSEMBLY FOR AN ADVISORY OPINION)**

**ANNEXES 90 - 115**

**THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND**

**VOLUMES 4 & 5**

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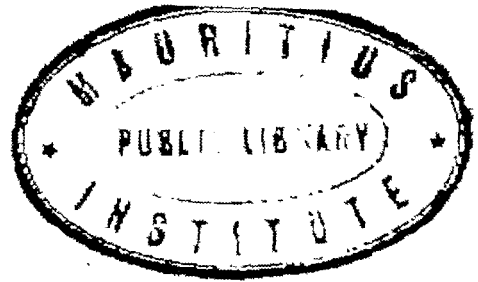
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## **ANNEX 90**

Report of the Select Committee on the Excision of the Chagos Archipelago, June 1983



**REPORT**  
of  
**The Select Committee on the Excision of the  
Chagos Archipelago**

**I — Introduction**

1. On 21st July 1982, the following motion standing in the name of the Honourable The Prime Minister was unanimously approved:—

" This Assembly is of the opinion that, in accordance with Standing Order 96 of the Standing Orders and Rules of the Legislative Assembly, a Select Committee of the House consisting of not more than nine members to be nominated by Mr Speaker, be appointed to look into the circumstances which led to and followed the excision of the Chagos Archipelago, including Diego Garcia, from Mauritius in 1965 and the exact nature of the transactions that took place with documents in support and to report; the said Select Committee to have powers to send for persons, papers and records." (1)

2. On 20th August 1982, Mr Speaker nominated the following Honourable Members to form part of the Select Committee (2):—

The Honourable Minister of Finance

The Honourable Minister of Commerce, Industry, Prices & Consumer Protection

The Honourable Minister of External Affairs, Tourism & Emigration

The Honourable Minister of Agriculture, Fisheries & Natural Resources

The Honourable Attorney-General and Minister for Women's Rights & Family Affairs

The Honourable Minister for Rodrigues & the Outer Islands

The Honourable A. Gayan

Dr the Honourable S. Peerthum

The Honourable Mrs F. Roussety

3. At its first meeting, the Select Committee unanimously elected the Honourable Jean-Claude de l'Estrac, then Minister of External Affairs, Tourism and Emigration, to the Chair.

4. The Committee met on 11 occasions and in the course of its proceedings heard witnesses whose names are listed in Appendix 'A' of this Report.

(1) Mauritius Legislative Assembly—Debates No. 8 of 21st July 1982—Col. 1026-1036.

(2) Mauritius Legislative Assembly—Debates No. 17 of 20th August 1982—Col. 2397—2398.

## II — The Chagos Archipelago

5. The Chagos Archipelago — until 8th November 1965, a dependency of Mauritius — comprises the islands of Diego Garcia, Egnont or six Islands, Peros Banhos, Salomon Islands, Trois Frères, including Danger Island and Eagle Island. It lies some 1200 miles north-east of Mauritius and covers an area from 7°39' to 4°41' S and from 70°50' to 72°41' E. The largest island of the group is Diego Garcia which is about 11 square miles.

6. The early history of the archipelago is closely associated with that of the Seychelles which were both explored by the Portuguese as far back as the first half of the sixteenth century. Since then, both archipelagoes have known the fate common to the other islands of the region which changed hands, most particularly, according to the hazards of the long standing rivalry between the British and the French in the Indian Ocean. It is to be noted—as a premonition to the present status of Diego Garcia—that on 18th March 1786 an attempt was made from Bombay, by the East India Company to convert the island into a military base.(1) The venture proved unsuccessful. But when, during World War II, Diego Garcia happened to be a valuable 'naval port of call' (2), the assessment proved to be a worthy one which dates back as far as 1769 when the French Naval Lieutenant La Fontaine made 'a thorough survey of the bay, the first sign of French appreciation of the possible strategic value of that island. (3)

Indeed, the strategical situation of the main island of the Chagos Archipelago—about 3,400 miles from the Cape of Good Hope, 2,600 miles from the North West Cape, Australia, 2,200 miles from Berbera, Somalia and 1,900 miles from Masirah Island, Oman (4)—was bound to make of Diego Garcia a point of capital importance in modern geo-politics. This position, in the nearest vicinity of the Maldives and of India, became more evident after World War II when England gradually withdrew from the region, in the wake of its new policy of granting political independence to its colonies.

7. Hence, the Chagos Archipelago was bound to play a pre-eminent role in what tended to constitute, through Britain's withdrawal, 'one of the largest and most complex power vacuums of the post-war periods.' (5) Later, the Gulf crisis was soon to make of the region a most strategic field of action for the powers which are bent upon controlling the energy routes to Europe and Asia.

(1) Auguste Toussaint—*L'Océan Indien aux XVIIe siècle*—Flammarion, p. 65.

(2) Joel Larus—*Diego Garcia; Political clouds over a vital U.S. base*. Strategic Review, Winter 1982—United States Strategic Institute, p. 45.

(3) Robert Scott—*Linnuria, The Lesser Dependencies of Mauritius*—Oxford University Press, p. 244.

(4) Robert Scott—*Op. cit.* p. 68.

(5) Joel Larus—*Op. cit.*

8. It might be useful to record here that it was not long after the British colonisation of Mauritius that the islands which constituted the dependencies thereof became an object of considerable interest to the new administering government. On 21st March, 1826, the House of Commons voted a resolution asking that an address be presented to His Majesty requesting that he 'be graciously pleased to give directions that there be laid before this House a return of the number of all the islands, which come under the denomination of dependencies of Mauritius, showing their geographical position in reference to that island, the extent of their territory, and any census which may have been taken of their population together with their civil and military establishments and the description of naval force which may have been stationed there at any time since the conquest of the colony.' (1) Complying with the request, Sir Lowry Cole, the then Governor of Mauritius, submitted, on 19th September of the same year, to Lord Bathurst what one of his successors described as 'the first catalogue of the dependencies of Mauritius ever to have been compiled' and which even included two islands 'which are now known to have existed only in the imagination of cartographers.' (2)

9. However, since the coming into force of the instructions contained in the Letters Patent of 31 August 1903 which made of the Seychelles a colony administratively independent from Mauritius, thought was constantly given by the British Government to the necessity of sharing between the two colonies the islands around. Such an exercise was concluded in 1921 and the Chagos Archipelago remained one of the lesser dependencies of Mauritius.

### III — The British Indian Ocean Territory

10. The long association of the Chagos Archipelago with Mauritius came to an end on 8th November 1965 with the coming into force of the British Indian Ocean Territory Order (Appendix 'B'). The new "colony" originally included not only the Chagos Archipelago, but the Farquhar Islands, the Aldabra Group and the islands of Desroches which formed part of the then British Colony of the Seychelles. Mention of these dependencies of the Seychelles is of strong political relevance. The two main political parties of the Seychelles which met the British Authorities during the first constitutional talks on the independence of that country (14—27 March 1975) made it a point to claim the islands back, but to no avail. However, as a result of the second talks with the Foreign and Commonwealth Office and which culminated into the independence of the then colony (28th June 1976) the Farquhar Islands, the Aldabra Group and the islands of Desroches were finally returned to the Seychelles. Hence, with the coming into force on 28th June 1976, of the British Indian Ocean Territory Order 1976, the 'territory' now comprises only the Chagos Archipelago, one of the former lesser dependencies of Mauritius.

(1) Mauritius Archives—SA 9.

(2) Robert Scott op. cit. p. 3.

11. The excision from Mauritius of the Chagos Archipelago was effected in accordance with the provisions of the Colonial Boundaries Act, 1895, but in complete violation of Resolution 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the 948th General Meeting of the United Nations Organizations, on 14th December 1960 (Appendix 'C'). Later,

- (i) the United Nations General Assembly Resolution 2066 voted on 16th December 1965 (Appendix 'D'), in line with the Declaration on the Granting of Independence to Colonial Countries and Peoples (Appendix 'C'); and
- (ii) the Resolution on Diego Garcia voted by the Assembly of Heads of State and Government of the Organization of African Unity at its 17th Ordinary Session in Sierra Leone from 1st to 4th July 1980. (Appendix 'E')

will be flouted in the same manner.

12. It would be wrong, however, to pretend that the excision of the Chagos Archipelago was a unilateral exercise on the part of Great Britain. In a statement in the House of Commons, no less a person than the Prime Minister of Great Britain declared that "the Government of Mauritius have been kept fully informed of, and have raised no objection to, the proposed use of Diego Garcia as a naval communication facility". (1) Details of such connivance, together with the Select Committee's opinion on the legal and moral validity of the transaction are shown later in the report. (Para. 52). The Committee, however, hastens to record that the attitude of the political delegation which attended the Mauritius Constitutional Talks 1965 when the question was first mooted is in sharp contrast with the firm and patriotic stand of the Seychelles political leaders who succeeded during the Constitutional Talks which preceded the independence of the Seychelles to recover the territorial integrity of their country.

13. The first public announcement in regard to the excision was made in the House of Commons on 10th November 1965 by the then Secretary of State for the Colonies, Mr Anthony Greenwood. (2). The news, embargoed for release in Mauritius at 20.00 hrs on that day, reproduced *in extenso* the Secretary of State's statement and contains the vague indication that the islands would be used for "defence facilities by the British and United States Governments." Mention is also made therein of the compensation to be paid to the company which exploited the plantations on the islands, the cost of "resettling elsewhere those inhabitants who can no longer remain there" and an additional grant of £3m. for development projects in Mauritius (Appendix 'F'). Later, the freeholds were acquired at agreed prices totalling £1,013,200.

(1) House of Commons debates — Vol. 811, Col. 138.

(2) House of Commons debates—Vol. 720, Col. 1-2.



14. The decision of the British Government became immediately a matter of big concern to most of the countries of the world and particularly to those located in the Indian Ocean and which saw in the process the beginning of a long term militarization of the region, with inevitable risks of involvement in nuclear warfare.

15. On the excision issue, as early as 16th December 1965, the United Nations, as its 1398th Plenary Assembly voted a Resolution inviting, *inter alia*, 'the administering power to take no action which would dismember the territory of Mauritius and violate its territorial integrity.' (Appendix D).

16. The Resolution did not, in the least, deter the British Government in its plans. On 30th December 1966, an Exchange of Notes was signed in London between the United Kingdom and the United States Governments on the Availability of certain Indian Ocean Islands for Defence Purposes (Common Paper No. 3231) and which confirmed the deal to use the islands in a joint military venture by the two countries. Indeed, the United States Government agreed at the very start 'to contribute up to £ 5m towards the costs of setting up the British Indian Ocean Territory, by waiving to that extent research and development surcharges for the United Kingdom purchase of the Polaris missile system.' (1) The islands of the British Indian Ocean Territory were made available for the defence purposes of both governments for an initial period of 50 years. (2)

17. The nature of these defence arrangements was first released to local public information in a press communique issued on 3rd December 1965 by the Government of Mauritius and which indicated "that at the time the matter was discussed with the Mauritius Government, the British and the American Governments were considering the establishment of a communications centre, supporting facilities and a naval refuelling depot" on the islands. (3) The disturbing element in the communique and which was for the first time brought to the public knowledge refers to prior consultation with the Government of Mauritius on the issue. This feature will be analysed later in the report. (Paras 39-44) In addition, it should be noted that the relatively more detailed press release of the Mauritius Government bears contrast with the euphemistic approach of the United Kingdom Government which persisted as late as 1970, on the eve of an upgrading of such facilities, to pretend that these innocently consisted of "a limited United States naval communications centre, partly operated by the United Kingdom and which would provide communications support to United States and United Kingdom ships and aircraft in the Indian Ocean." (4)

(1) House of Commons debates—Vol. 899, Col. 271-272.

(2) House of Commons debates—Vol. 870, Col. 1274.

(3) Mauritius Legislative Assembly debates No. 27 of 14th December, 1965, Col. 1850-1851.

(4) House of Commons debates—Vol. 808, Col. 328.

These arrangements, within the terms of the 1966 Exchange of Notes, were approved, in principle, by the United Kingdom Government in 1968. A further Exchange of Notes was signed on 24th October, 1972, and the facility began operating in 1973 (1) when the United Kingdom Government agreed to "a limited expansion of the radio station" (2) in addition to the original defence facilities which were said then to "consist of a United States navy radio station, an 8,000 ft runway which is not capable of taking the larger transport and tanker aircraft fully laden; a natural anchorage restricted in draught and turning room; accommodation for some 450 personnel; and limited aircraft parking space and oil storage facilities." (2)

18. However, on 5th February, 1974, a statement made in the House of Commons by the Secretary of State for Foreign and Commonwealth Affairs, Mr Julian Amery, revealed that Her Majesty's Government had agreed in principle to a proposal of the United States Government made in January 1974 and in accordance with the 1966 Anglo-American Agreement (Command Paper No. 3231) to the expansion of the facilities at Diego Garcia and which would involve "improvements to the anchorage and to the airfield as well as to the shore facilities". The last part of the statement is however, indicative of military concern of a larger dimension:—

"Her Majesty's Government have long felt that it is desirable in the general Western interest to balance increased Soviet activities in the Indian Ocean area. Accordingly, they welcome the expansion of the United States facilities which will also be available for British use. Against this background, the United States and the British Governments have agreed to consult periodically on joint objectives, policies and activities in the area. As regards the use of the expanded facilities in normal circumstances, the United States and British representatives in Diego Garcia will inform each other of intended movements of ships and aircraft. In other circumstances the use of the facilities would be a matter for the joint decision of the two Governments." (3)

Later, on 20th March, 1974, the Under-Secretary of State for Foreign and Commonwealth Affairs, Miss Joan Lester, again stressed that one of the reasons for the United Kingdom's acceptance of the United States proposal was the fact that the Soviet naval presence in the Indian Ocean had increased steadily in quantity and quality over the last five years and is larger than that of the Western countries. (4)

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(1) House of Commons debates—Vol. 870; Col. 1274.

(2) House of Commons debates—Vol. 897; Col. 204.

(3) House of Commons debates—Vol. 868; Col. 276-277.

(4) House of Commons debates—Vol. 870; Col. 1275.

19. An assessment of the actual military arrangements on the islands is obviously difficult and whatever may be their size and nature is immaterial to this report. On two occasions at least,—11th March and 22nd July, 1975—the then British Secretary of State for Defence, Mr Roy Mason, declared to the House of Commons that it was not the policy of the British Government “to confirm or deny the presence of nuclear weapons in ships, aircraft or any particular location”—a statement pregnant with alarming military connotations.

Ten days after the announcement in regard to the constitution of the British Indian Ocean Territory, the then Secretary of State for the Colonies, Mr Anthony Greenwood, declared to the House of Commons: “There is certainly no question of any derogation from Britain’s sovereignty of these territories.” (1) And, later, the then Secretary of State for Foreign and Commonwealth Affairs, Mr Hattersley, re-echoed: “The island of Diego Garcia is British Sovereign Territory.” (2) At this stage, the Committee cannot dismiss the fact that such sovereignty was claimed in the teeth of strong opposition from the United Nations Organisation, the Organisation of African Unity and most of the independent States in the Indian Ocean, including India, whose Prime Minister, Mrs Indira Gandhi, on 7th February, 1974, highlighted the danger that the militarization of the Chagos Archipelago constituted for the security of her country.

#### IV — The Mauritius Constitutional Conference, 1965

20. On 7th September, 1965, a Mauritius delegation comprising representatives of the Mauritius Labour Party, the Parti Mauricien Social Démocrate, the Independent Forward Bloc, the Muslim Committee of Action and two independent Members of the Legislative Assembly (Appendix G) met at Lancaster House, under the chairmanship of the then Secretary of State for the Colonies, Mr Anthony Greenwood, “to reach agreement on the ultimate status of Mauritius, the time of accession to it, whether accession should be preceded by consultation with the people and, if so, in what form.” (3) The Conference met until 24th September, 1965.

21. The claim for independence was supported at the Conference by the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action, although this party had put up certain conditions in regard to the electoral system. The Parti Mauricien Social Démocrate advocated, as a substitute for independence, close constitutional associations with Great Britain and submitted that, in any event, the people of Mauritius should be allowed to express their preference in a free referendum.

(1) House of Commons debates Vol. 720, Col. 1309.

(2) House of Commons debates Vol. 872, Col. 327.

(3) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 1.

22. In the final communiqué issued on 24th September 1965, the Secretary of State for the Colonies ruled out the proposal submitted by the Parti Mauricien Social Démocrate for association with Great Britain on the ground that "given the known strength of the support for independence, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled." The plea for a referendum which, in the Secretary of State's opinion would prolong "the current uncertainty and political controversy in a way which would harden and deepen communal divisions and rivalries" was also discarded. The United Kingdom's Government ultimate decision on the issue was "to fix a date and take necessary steps to declare Mauritius independent after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly." (1)

23. The final communiqué also referred to the following defence arrangements between the British and the Mauritius Governments:—

23. At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield. (2)

(1) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 4.

(2) *Op. cit.*, p. 5.

That section of the communiqué which touches upon military arrangements makes no mention of any agreement in regard to the excision of any part of the Mauritian territory in the context of either mutual defence or what was ultimately termed "in the general western interest to balance increased Soviet activities in the Indian Ocean." (1)

However, in the light of evidence produced by representatives of the political parties which took part in the Mauritius Constitutional Conference 1965, and which is reviewed at paragraph 25 hereunder, the Committee is convinced, without any possible doubt, that, at a certain time while the Constitutional talks were on, the question was mooted. And, further, the Committee is satisfied that the genesis of the whole transaction is intimately connected with the constitutional issue then under consideration.

24. The Committee regrets that, apart from Sir Seewoosagar Ramgoolam who led the Mauritius Labour Party delegation, the leaders of the other participating political parties are no more. Nevertheless, the Committee has been fortunate enough to hear members from each of the parties present at Lancaster House, in September 1965.

25. Their reports to the Select Committee can be summarized as hereunder:

*A The Mauritius Labour Party*

The Mauritius Labour Party, led by the then Premier and Minister of Finance, Dr the Honourable Seewoosagar Ramgoolam, now Sir Seewoosagar Ramgoolam, was, numerically speaking, the most important political party which attended the Constitutional Conference. Sir Seewoosagar was heard by the Select Committee on 6th December 1982. He declared that the eventual excision of the Chagos Archipelago from Mauritius never appeared on the agenda of the Constitutional talks nor was it ever brought for discussion in Mauritius prior to the Conference. It was only, while the talks were on, that he had two private meetings with the British Authorities; one, at 10, Downing Street where the British Government's decision to grant independence to Mauritius was communicated to him by the then Prime Minister, and the second, on 23rd September, 1965, in one of the committee rooms of Lancaster House where he was, for the first time, informed by the Secretary of State, Mr. Anthony Greenwood, of the United Kingdom's intention of detaching the Chagos Archipelago from Mauritius.

(1) House of Commons debates Vol. 868, Col. 277.

Sir Seewoosagur declared that he accepted the excision, in principle, as (i) he felt he had no legal instrument to prohibit the United Kingdom Government from exercising the powers conferred upon it by the Colonial Boundaries Act 1895, which powers could not be resisted even by India when the partition of this country took place before its independence (ii) he could not then assess the strategic importance of the archipelago which consisted of islands very remote from Mauritius and virtually unknown to most Mauritians and (iii) it was concretely expressed to him that the islands would be used as a communications centre and not as a military base.

Sir Seewoosagur strongly emphasised that, at no time, during that meeting and during meetings he had subsequently with the Secretary of State — after the Constitutional talks — to discuss details of the excision, was he made aware that the United States of America were in the deal and that the islands would be required for a joint U.K./U.S.A. defence venture. So much so that the statement made in the Legislative Assembly, on 14th December 1965, by the then Acting Premier, Mr Guy Forget, (Appendix 'F') came as a surprise to him. He even declared to the Select Committee that the circumstances which led to the introduction in that statement of certain elements then unknown to him were still shrouded in 'mystery'. He did not deny, however, that while the Conference was on, a Mauritian delegation led by late Mr Guy Forget met the Minister in Charge of Economic Affairs in the American Embassy in London.

Sir Seewoosagur maintained that the choice he made between the independence of Mauritius and the excision of the archipelago was a most judicious one. He thought, however, that had all the political parties present at Lancaster House been united in the claim for independence, better conditions might have been obtained. But, the Parti Mauricien Social Démocrate (P.M.S.D.) walked out of the Conference, as soon as it became evident that independence could not be avoided.

Sir Seewoosagur recalled that at one of the meetings on the excision issue, with the Secretary of State, he stressed that the sovereignty of Mauritius over the islands should be maintained and all rights connected with fishing and mineral prospection should be preserved. He also claimed the possibility for planes to use the strip on Diego Garcia for any emergency landing on their route to and from Mauritius. No records of these proceedings were communicated to him, but he had the impression

that, apart from the claim for sovereignty, all the other points were agreeable to the British Government including a proposition that, in the event of excision, the islands would be returned to Mauritius when not needed by the United Kingdom Government. He recognised, however, that apart from certain statements made by himself and members of his Government in international meetings, no official request had been made for the retrocession of the islands to Mauritius.

Touching upon the question of the displacement of the Ilois community, Sir Seewoosagur said that it was never raised with him at any time in London and whatever correspondence he exchanged later in Mauritius with the British High Commission on the subject, had to take into account the unexpected nature of the statement made in the House by late Mr Guy Forget. (Appendix 'F')

Sir Veerasamy Ringadoo confirmed that, at no time, was the question of the excision of the Chagos Archipelago brought on the table of the Mauritius Constitutional Conference of September 1965. He might have been informed of such proposals after the private meeting Sir Seewoosagur Ramgoolam had with the Secretary of State, Mr Anthony Greenwood, on 23rd September, 1965. He did not object to the principle of the excision as he felt that, being given the defence agreement entered into with Great Britain (paragraph 23)—a decision which had the unanimous support of all political parties present at Lancaster House, most particularly in view of the social situation which had deteriorated in Mauritius—the United Kingdom Government should be given the means to honour such agreement. It was in this context that he viewed the excision of the islands which were to be used as a communications station.

Sir Veerasamy stated that, about one week after the Constitutional talks, Sir Seewoosagur Ramgoolam and himself had discussions with officials of the Foreign Office on the excision issue, where both of them stressed that (i) when no longer needed, the islands should be returned to Mauritius (ii) all rights connected with fishing and mineral prospection would be maintained for Mauritius (iii) the possibility for planes to use the strip on Diego Garcia, in any emergency, on their route to and from Mauritius should be recognized and (iv) 'all the requirements for the installation of the station and for the food and everything would, as far as possible, be taken from Mauritius.' Unfortunately, no minutes of this meeting were circulated.

Sir Veerasamy supported Sir Seewoosagur's contention that nothing was heard in Mauritius about the excision until Mr Guy Forget made a statement in the Legislative Assembly on 14th December, 1965. He also maintained that the substance of this statement was absolutely alien to the nature of the talks he had, in company of Sir Seewoosagur, with the officials of the Foreign Office, in London.

Sir Harold Walter also stated that, at no time in Mauritius, prior to the Constitutional talks, was the question of the excision brought up for discussion. He happened to learn of this issue when he saw the definition of the State of Mauritius in a draft Constitution prepared for the country by the Colonial Office. He then questioned Sir Seewoosagur Ramgoolam on the matter and the latter revealed to him that he had to make some concessions on that score, as he felt that at one time during the Conference, the British Authorities tended to agree to the claim of the Parti Mauricien Social Democrate (P.M.S.D.) for a referendum.

Sir Harold did not resist the stand taken by the Leader of the Mauritius Labour Party as he knew the amount of pressure that was made to bear on the United Kingdom Government against the grant of independence to Mauritius. Moreover, public opinion in the country was largely divided on the nature of constitutional progress to be achieved. Indeed, he had got Sir Seewoosagur's assurance that the abandonment of the Chagos Archipelago had been agreed on certain conditions, namely, that (i) fishing and mineral prospection rights would be preserved for Mauritius (ii) the islands would be returned when no more needed and (iii) Mauritians would be employed to work there. He further stressed that no Mauritian delegate present at Lancaster House had expressed any dissent on the principle of the excision.

Sir Harold declared having been made aware of the United States' interest in the archipelago "years after" the Constitutional Conference. Everything that could have been published on that issue before or immediately after the talks might have escaped his attention as he was mainly interested in the accession of Mauritius to national sovereignty.

Sir Harold stated that the question of the Ilois was raised in London and they were considered as Mauritians who had migrated to work on the islands. However, the amount of compensation to be paid by the United Kingdom was not discussed at his level and he came to know about it much later.



Sir Satcam Boolell informed the Committee that the question of the excision of the Chagos Archipelago was raised by the British Officials in private with Sir Seewoosagur Ramgoolam, in London. He was not much concerned about it as he only had in mind the independence of Mauritius. He can vaguely recollect that the United Kingdom Government wanted Diego Garcia to be used as a signal station and that the whole archipelago would be returned to Mauritius when no more needed. He was further given to understand that all mineral resources around the islands would remain the property of the Government of Mauritius. At no time was he made aware of the United States involvement in the deal.

Sir Satcam further added that, in spite of the fact that he was then the Minister responsible for agriculture, he had no idea of any bid for the sale of Mauritian sugar on the American market as that transaction was in the hands of the Mauritius Sugar Syndicate.

Sir Satcam affirmed that he did not attend any meetings where the excision of the Chagos Archipelago was discussed and on this question he had put all his trust in the wisdom and experience of Sir Seewoosagur Ramgoolam.

#### B. *The Parti Mauricien Social Démocrate (P.M.S.D.)*

The first political commotion which took place in Mauritius, as a result of the excision of the Chagos Archipelago was the resignation, on 11th November, 1965, of the three P.M.S.D. Ministers (Messrs Koenig, Duval and Devienne) from the coalition Government. The next day, they convened a press conference in Port Louis and explained that the reason for their resignation was Government stand in regard to the excision of the Chagos Archipelago. The party's leader, Mr Koenig, stressed that the P.M.S.D. was not against the use of the archipelago for a joint United Kingdom/United States defence venture. But his party felt that Government should have retained the sovereignty of Mauritius over the islands and negotiated their occupation, on the best possible terms, direct with the occupying powers. The P.M.S.D. had in mind the possibility of securing a substantial sugar quota on the United States market and defining a policy of emigration to the United States for unemployed Mauritians.

This stand was supported by Sir Gaëtan Duval, Q.C., one of Mr Koenig's co-delegate, when he appeared before the Select Committee on 12th November, 1982. He underlined that a periodical review of such arrangements direct with the occupying powers would have been most beneficial to Mauritius. Sir Gaëtan further assured the Committee that the Council of Ministers was, from the very start, aware that the Chagos Archipelago would be used for defence purposes jointly by the United Kingdom and the United States. He indicated that this state of affairs is contained in official documents. The possibility of recruiting Mauritian workers for the construction of military installations at Diego Garcia and the purchase, as far as possible, of materials from Mauritius was even envisaged at that time.

Sir Gaëtan explained that, on 23rd September, 1965, while the Mauritius Constitutional Conference was discussing the proposition for a referendum put forward by his party, the chairman, Mr Anthony Greenwood, suspended the proceedings and invited the Mauritian delegates to meet him and offer their views on the future of the Chagos Archipelago. The P.M.S.D. refused to attend the meeting, feeling that such a question was outside the agenda of the Conference and that the party had no mandate to consider any possible excision of part of the Mauritian territory. Sir Seewoosagar Ramgoolam, Sir Abdool Razack Mohamed and Mr Sookdeo Bissoondoyal, representing respectively the Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc responded to the invitation but Sir Gaëtan was not in a position to say if the final decision was taken in their presence or as a result of private consultations between Mr Anthony Greenwood and Sir Seewoosagar Ramgoolam. It was, revealed Sir Gaëtan, at the resumption of proceedings, after such a meeting extraneous to the Conference agenda, that the Secretary of State ruled out the suggestion for a referendum, leaving the clear impression that some sort of blackmailing had taken place.

Alluding to the question of the displaced UoIs, Sir Gaëtan argued that the excision having taken place in 1965, that is, three years before the independence of Mauritius, those persons cannot be considered as citizens of Mauritius but British nationals. He regretted that (i) the case of Mr Vencatassen had been withdrawn from the British Law Courts, thus depriving the community at large from obtaining the verdict of the Court on this delicate issue and (ii) the attitude of the Mauritius Government, after independence, vis-à-vis the United Kingdom, might, in a large measure, have jeopardised the claim of Mauritius for recovering its sovereignty over the archipelago.

C *The Independent Forward Bloc (I.F.B.)*

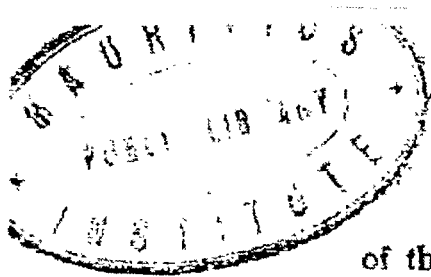
Honourable Aneerood Jugnauth, Q.C., Prime Minister of Mauritius, who formed part of the Mauritius Delegation to the Constitutional talks 1965, under the banner of the I.F.B., was heard by the Select Committee. He stated that never, in the course of the talks, was the question of the excision of the Chagos Archipelago raised. Some time before the Conference ended, the Leader of the Mauritius Labour Party, Dr Seewoosagur Ramgoolam, came to the desk of the I.F.B. delegation and told the delegates that he had accepted a proposition from the United Kingdom to use Diego Garcia as a communications station. There was no indication that the islands would be used as a military base, nor was the question of an excision from the Mauritian territory mentioned. Mr Jugnauth said that, at the time, the I.F.B. "had not much to say about it", as the party thought that the installation of communications facilities on the islands was an innocuous venture.

Mr Jugnauth stressed that, at no time, did the Leader of the I.F.B. inform his co-delegates that he had taken part in any private talks on the issue with the British authorities, nor was the eventual excision of the islands ever discussed at party level. He added that the statement made by Mr Guy Forget in the Legislative Assembly on 14th December, 1965, (Appendix 'F') came as a surprise to him in the sense that it contained facts that were never brought to his knowledge or to that of his party before. He was not a minister when the excision was discussed in the then Council of Ministers and he was never informed subsequently of the decision then taken.

Mr Jugnauth recalled that the withdrawal of the P.M.S.D. from the Constitutional talks had nothing to do with the excision of the Chagos Archipelago which, he repeated, was never brought on the Conference agenda. The P.M.S.D. delegates left when they learnt of the United Kingdom's intention to grant independence to Mauritius.

The Committee wishes at this stage to reproduce a statement made in the Legislative Assembly, on 19th October, 1976 by late Mr. S. Bissoondoyal, then Leader of the I.F.B. on the excision of the archipelago and which supports substantially the evidence of Mr. Jugnauth:—

The London Conference in 1965 witnessed this question coming out whether Mauritius would agree to part with Diego Garcia. That was the question put to me as a Member of the Government, put to me in private. I had an answer for it and that question was also put to the Leader



of the Parti Mauricien. I am aware of the attitude of the Parti Mauricien at that time. Now let me make it clear to the House, the aftermath of all this matter was dealt with personally by the Prime Minister and no Government then existing. I was a Member of the Government, I knew what was taking place: (1)

- D. *Mr Maurice Paturau, D.F.C., C.B.E.—Independent Member*  
Mr Paturau appeared before the Select Committee on 13th December 1982. He formed part of the Mauritius delegation which attended the Constitutional talks of September 1965. He revealed that he participated in no less than two meetings with the British authorities on the question of the excision of the Chagos Archipelago, but all these meetings were extraneous to the open Constitutional Conference which was then in progress. It was in the course of the first of these meetings that Dr Ramgoolam himself and the other party leaders took cognizance of the amount of compensation proposed by the United Kingdom. When the possibility of securing a sugar quota on the American market was evoked by the Mauritian side, the British officials suggested that this question should be dealt with direct with the American Embassy in London. A meeting was accordingly arranged and Mr Guy Forget led the Mauritian delegation which comprised, *inter alia*, Messrs Abdool Razack Mohamed and Jules Koenig. The request of Mauritius was turned down by the American officials who stated that "as far as Chagos was concerned, they would not commit the American Senate or House of Representatives about anything like a sugar quota." They intimated that anything connected with the Chagos Archipelago issue was a matter for direct negotiation between the United States and the United Kingdom Governments, and not with Mauritius.

The second meeting took place after the P.M.S.D. had retired from the Conference and the Mauritius delegation was then represented by Dr Ramgoolam, Messrs Abdool Razack Mohamed, Sookdeo Bissoondoyal and himself. A final compensation of £3m was then proposed by the United Kingdom Government. He expressed dissent as he thought the compensation inadequate, but the other delegates agreed.

Mr Paturau stressed that during all the negotiations that took place, he had in mind the lease of the Chagos Archipelago by Mauritius. An initial period of thirty years was even proposed during which term a sugar quota at more remunerative prices would be negotiated, coupled with the possibility of obtaining

(1) Debates No. 28 of 1976, Col. 2885-2886.

rice and flour from America at subsidized rates. Such lease would have been, more or less, on the model of the North West Cape Agreement between Australia and the United States, signed in 1963. He did not agree that the idea of a communications station was devoid of any military connotation. The American sub-marines needed in fact a land base which would 'generate enough messages at low frequency, but of high power so that they could reach the sub-marine and give it the actual position it was in so that it could fire its missiles with as much precision.'

Referring to the attitude of the P.M.S.D. on the excision issue, Mr Paturau said that, at no time, either in London or in Mauritius, did that party express any opposition to the principle of the excision. The party was most concerned at Lancaster House with reservations in the electoral system and walked out of the Conference on that issue, whereas the resignation of the Ministers of that party from the then Council of Ministers was motivated by the inadequacy of the compensation offered by the United Kingdom Government. As regards the inhabitants of the islands, he explained that, to his mind, those who came from the Seychelles were considered as migrants, whereas the others were "established Mauritian" whose fate was never discussed at the meetings he attended. ]

#### V — The Lesser Dependencies in the Wake of a New Destiny

26. In November 1959, a Commission headed by Professor J. E. Meade was appointed to report to His Excellency the Governor of Mauritius, then Sir Colville Montgomery Devereil, K.C.M.G., C.V.O., on ways and means of improving the economic and social structure of Mauritius. Although the terms of reference of the Commission were wide enough, the Commissioners did not feel that a study of the economic potentialities of the dependencies of Mauritius, including Rodrigues, was justified. Indeed, the temptation of ignoring whatever contribution the lesser dependencies particularly, could make to the economy of Mauritius was so great that at paragraph 6:44 of their report, the Commissioners invited Government to reject an application for financial assistance made by the two private companies which were then engaged in copra production on the Chagos and Agalega islands. (1)

27. The outright ignorance of the lesser dependencies and of their possible contribution to the economy of Mauritius, by the Meade Commission, did not deter the private sector in its attempt to rehabilitate the islands by a more scientific approach to copra production. The sector felt that if the soap and oil industry were to be maintained in Mauritius, as a means of helping both to combat unemployment and to save foreign exchange,

(1) J. E. Meade & Others, *The Economic and Social Structure of Mauritius*—Frank Cases & Co. Ltd. p. 138.

it was imperative that the raw materials produced on the islands should not be abandoned. Hence, in September/October 1961, an exploratory survey of the islands was undertaken by a team composed of Mr René Maingard de la Ville-es-Offrans, acting on behalf of Rogers & Co., Mr Paul Moulinié, an entrepreneur from the Seychelles and Dr Octave Wiehé.

28. Mr René Maingard de la Ville-es-Offrans, now Sir René Maingard de la Ville-es-Offrans, C.B.E., was heard by the Select Committee on 8th February 1983. He related to the Committee the attempts made by the private sector to rehabilitate copra production on the islands, with a view particularly to saving the soap and oil industry in Mauritius. These attempts may be summarized as follows. In August 1961, the two private companies which were operating on the islands offered to Rogers & Co. to buy 55% of their shares. Rogers & Co., before taking any decision on the offer, resolved to conduct a survey *in situ* of the islands and this exercise was undertaken by the team referred to at paragraph 27 above. After a full assessment of the economic situation of the operating companies and a thorough survey of the prospects of the industry, the party recommended that the islands be purchased by a private enterprise made up with the equal participation of Rogers & Co., the existing shareholders and Mr Paul Moulinié of the Seychelles. Mr Maingard de la Ville-es-Offrans tried to enlist, for the purpose, the financial support of the Government of Mauritius. Hence, through the agency of Dr Seewoosagur Ramgoolam, a meeting was arranged at Le Reduit between himself and the Governor of Mauritius (Sir Colville M. Deverell, K.C.M.G., C.V.O.), the Colonial Secretary (Mr Tom Vickers, C.M.G.), the Financial Secretary (Mr A. F. Bates, C.M.G.) and Mr A. L. Nairac, C.B.E., Q.C. who was then Minister of Industry, Commerce & External Communications.

The Governor then informed him that, taking into consideration the recommendations of the Meade Commission, the Colonial Office was opposed to any form of Government financial participation in the venture.

On 7th March 1962, the Colonial Steamships Co. Ltd. offered to put up a society, the Chagos Agalega Ltd., at par with Mr Paul Moulinié and shareholders from the Seychelles with a view to purchasing the islands. That company was registered in the Seychelles and the promoters suggested that the sovereignty of the islands should be transferred from Mauritius to the Seychelles. Although the then Governor of the Seychelles seemed agreeable to the project, the Colonial Office again stood in the way. Hence, the exploitation of the islands remained the sole concern of the Chagos Agalega Ltd., which had become the owners of the islands.

In 1964, Mr René Maingard de la Ville-es-Offrans had again the possibility of discussing, *inter alia*, the future of the islands with top British political personalities, such as Messrs Lennox-Boyd, Patrick Wall, Ian Mac Leod and Sir Tufton Beamish. He got the firm impression out of the talks that the British Government had no intention of parting with the islands for which they had conceived projects of a nature other than industrial.

In April 1967, the assets of the Chagos Agalega Ltd. were compulsorily acquired by the United Kingdom Government and the administering company gave full powers to Mr Paul Moulinié to discuss the compensation issue and to take all measures connected with the displacement of the local population. Indeed, neither the Government of Mauritius nor any of the Mauritian shareholders took part in the negotiations. The amount paid by the United Kingdom Government was £660,000.—, but consideration of the company's assets brought the figure to Rs 7,500,000. The Chagos Agalega Ltd was wound up on 19th December 1975 after the compulsory acquisition, on 1st October 1975, of Agalega by the Government of Mauritius. Its registration at the Registrar General's Office of the Seychelles was cancelled on 11th December 1980.

29. The Meade Commission was appointed 'to make recommendations concerning the action to be taken in order to render the country capable of maintaining and improving the standard of living of its people, having regard to current and foreseeable demographic trends' with particular reference to 'the economics of the staple agricultural industries of Mauritius'. In the chapter introductory to their report, the commissioners, however, explained that in their assessment they had chosen to ignore the dependencies of Mauritius, namely Rodrigues, the Chagos Archipelago, Agalega and St. Brandon. They did not even consider a visit to these dependencies necessary. The reason for this deliberate omission is thus outlined in chapter 1:2 of the report. 'Unfortunately, we had no opportunity of visiting the dependencies and have not therefore included them within the scope of our report. We do not think this greatly detracts from our report, however, since the dependencies amount for only 12% of the colony's area and 3% of its population, and play little or no part in the economic life of the island of Mauritius itself.' (1)

This statement might have proved surprising at the time it was published in as much as it looked contradictory to the terms of reference of the Commission which invited the Commissioners, *inter alia*, to look for a definition of 'the broad lines of development policy in the future.' It is indeed unbelievable that, in that particular context, the unquestionable potentialities of the dependencies, including Rodrigues, in the framing of a new social and economic structure for Mauritius could not have attracted the attention of the experts who formed part of the Meade Commission.

The Select Committee is thus tempted, at this stage, to share Sir Rene's feelings that the deliberate assignment of the dependencies of Mauritius to purposes in no way connected with the economic and social interests of Mauritius, formed part of a definite and long term strategy on the part of the United Kingdom Government.

(1) J. E. Meade and Others—*op. cit.*

## PART II

## DOCUMENTARY EVIDENCE

## VI — Preliminary Remark

30. At the very outset, the Committee wishes to report a most deplorable state of affairs. To an application for copies of correspondence exchanged between the Governor of Mauritius and the Secretary of State for the Colonies, pertaining to the years immediately preceding the independence of Mauritius, the Private Secretary and Comptroller, Le Reduit, replied that there were 'no record concerning the despatch of document from this office to other departments prior to 1970.' He further added: "I have also made searches in our Archives but have not been able to find any document where the information asked for could have been registered. I understand from Mr E. G. Goldsmith, former Private Secretary, that at the time of independence in 1968, a lot of documents were either destroyed or taken over by Mr Young, who was then Information Officer at the British High Commission."

The Committee deeply regrets that such valuable documents have not been allowed to form part of our archives. Their removal or destruction, in addition to being a national calamity, will be most harmful to the efforts of students in our local political history.

## VII — The Anglo-American Survey

31. The first serious hint at the possibility of the United Kingdom Government using Mauritius and its dependencies, most particularly Diego Garcia, as a unit for its defence strategy in the Indian Ocean, came from Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in the course of an interview given on the B.B.C. in the programme 'London Calling Mauritius', on 21st February, 1964. (1). This opinion was subsequently carried by the written press overseas which made no mystery of the United Kingdom's choice of 'keeping Aden at all costs, enlarging Britain's fleet of aircraft carriers, or finding some territory in the Indian Ocean, if there is one, with natural facilities and a small, politically isolated population.' (2).

32. However, no allusion to any consultation between the United Kingdom Government and the local authorities was reported until the 31st July, 1964, when a local daily reproduced the following information from its London correspondent:

"Il y a eu à Maurice, une importante réunion du Cabinet des Ministres, présidée par Sir John Rennie, probablement le 13 ou le 14 juillet. Au cours de cette réunion, Sir John a tenu les ministres présents au courant d'un communiqué dans lequel le Secrétaire d'Etat aux Colonies, M. Sandys, révèle l'intention de Londres de faire de Maurice, des Seychelles et d'Agalega une importante base navale militaire." (3)

(1) Advance—22nd February 1964.

(2) The Economist—4th July 1964

(3) Le Mauricien—31st July 1964.



33. The meeting of the Council of Ministers referred to in the press excerpt quoted at paragraph 32 above took place on the 14th July 1964. The Minutes of that meeting indicate that the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., O.B.E., made a statement on certain developments in the field of defence. The Select Committee regrets that the Governor's pronouncement cannot be reproduced as it, undoubtedly, forms part of the records which have either been destroyed or removed to the British High Commission as mentioned in paragraph 30 of this report. However, this situation does not deter the Select Committee in its opinion that Sir John's statement was of a nature which cannot but render absolutely misleading, both to the House and to the nation, the interjection made in the Legislative Assembly, on 10th November, 1964, by Honourable Satcam Boollell to the effect that the Government of Mauritius was not aware of any military project conceived by the United Kingdom Government for either Mauritius or any of its dependencies. (1) Indeed, in reply to a parliamentary question in the House of Commons on 5th April 1965, Mrs Eirene White, then Under-Secretary of State for the Colonies, revealed that consultation prior to the survey had in fact taken place both at the level of the Premier and of the Council of Ministers. She stated: "The Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or in Washington." (2) However, the Select Committee will establish hereunder (para. 34) that not only the Council of Ministers but the whole Legislative Assembly sitting in 1964 were informed, in unequivocal terms, of the British-American technical survey of the islands. The information was even released to the press on 14th December, 1964.

34. On 10th November, 1964, in the Legislative Assembly, at adjournment time, Honourable B. Ramlallah intervened lengthily on certain speculation to the effect that a joint Anglo-American survey was in progress in Diego Garcia and requested a full and prompt explanation from Government (Appendix 'H'). The reply came on 14th December, 1964, in the form of a letter from the then Chief Secretary, Mr Tom Vickers, C.M.G., addressed to Honourable Ramlallah, copied to all Members of the Legislative Assembly and released to the press. (Appendix 'I'). Confirmation is contained therein of (i) the presence of a joint British-American survey team 'on certain islands, including the Chagos Archipelago, Agalega, but not including Mauritius' and (ii) prior notification of this exercise having been given to the Council of Ministers. Such notification was no doubt contained in Sir John Rennie's statement to the Council of Ministers on 14th July, 1964. (paragraph 33) and

(1) Mauritius Legislative Assembly Debates No. 23 of 10th November 64 Col. 1574.

(2) House of Commons Debates—Vol. 710, Col. 26.

brings to naught all future submissions to the effect that any United Kingdom's project for the islands was first communicated to both the Premier and his Ministers *en marge* of the Constitutional talks of September 1965 and that the United States participation therein was unheard of prior to that conference.

35. The news of the Anglo-American survey of the islands met with protests from nearly all quarters of the Mauritian press which urged the then Government to combat the project. The danger of thus pushing the Indian Ocean into the zone of nuclear warfare was vehemently denounced in the Upper House of Parliament, India, on 18th November 1965, by the then Indian Minister of State for External Affairs, Mr Sardar Swaran Singh, and a no less energetic condemnation of the project was echoed in Sri Lanka by the then Prime Minister, Mrs Bandaranaike. And, at this stage, the Select Committee wishes to underline that, in the face of the complete indifference of the then Government, even a group of Mauritians living in the United Kingdom took the initiative of publishing in the British press their strong opposition to the Anglo-American venture. (1) Unfortunately, none of these outbursts of indignation succeeded in provoking from the then Premier of Mauritius and his Ministers a single note of protest.

36. On 15th June 1965, nearly on the eve of the Constitutional talks, Dr I. M. Curé, pressed Government to say whether the United States of America had any military interests in our dependencies. He urged Government to convey to the British Authorities 'the inadvisability of entering into any agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next' and to ascertain, in the first instance 'the presence of oil fields in our dependencies before alienating them'. (Appendix J) The reply again came from Mr Tom Vickers who referred the Legislative Assembly to the reply he made on 14th December 1964 to Honourable Ramlallah. (Appendix D) Hence, when the parliamentary vacations came on 29th June, 1965, the Ministers who formed part of the Mauritius delegation to the Constitutional talks of September of that year, prepared their trip to Lancaster House in a spirit which, as far as the lesser dependencies were concerned, bordered, in the Select Committee's opinion, on outright collusion. Indeed, Sir Seewoosagur Ramgoolam when he deposed before the Select Committee on 6th December, 1982, made no bones of submitting that his main concern at Lancaster House was the independence of Mauritius and that he was prepared to achieve that aim at any costs. He stated: 'A request was made to me. I had to see which was better—to cede out a portion of our territory of which very few people knew, and independence. I thought that independence was much more primordial and more important than the excision of the island which is very far from here, and which we had never visited, which we could never visit.' He added: "If I had to choose between independence and the ceding of Diego Garcia, I would have done again the same thing.'

(1) *Le Mauricien*—29th September, 1964.

## VIII — Outside the Conference Table, 1965

37. The Select Committee accepts the unanimous statements made by the participants at the Constitutional Conference of September 1965, and who deponed before the Select Committee (paragraph 25), to the effect that at no time was the question of the excision of any part of the Mauritian territory brought for discussion at the open Conference. Such decision of the United Kingdom Government was privately communicated to the then Premier, Dr the Honourable Seewoosagur Ramgoolam. But the Select Committee is not prepared to put on the sole shoulders of the latter the blame for acceding unreservedly to the United Kingdom's request. Evidence is not lacking to show that, indeed, the Premier shared with, at least, the leaders of the political parties present at Lancaster House, and with some independent participants, including Mr Paturau, D.F.C., the United Kingdom's offer of excision of the islands and the interests of the United States of America in the deal. So much so that, at one time during the Conference, a Mauritian delegation comprising MM Guy Forget (Labour), Jules Koenig (PMSD), Abdool Razack Mohamed (CAM) and Maurice Paturau (Independent) met the Minister in charge of Economic Affairs in the American Embassy in London in an attempt to secure, against the proposal for excision, a remunerative market in America for Mauritian sugar. The only surviving member of that particular delegation, Mr Maurice Paturau, D.F.C., informed the Select Committee that the American authorities turned down the proposition and stressed that all matters incidental to the Chagos Archipelago issue were meant for discussion between the United States and the United Kingdom and not with Mauritius.

38. The most decisive event in the history of the excision of the Chagos Archipelago occurred on Thursday, 23rd September, 1965, on the eve of the closing session of the Constitutional talks. On that day, discussions were officially held between a group of United Kingdom officials, headed by the Secretary of State for the Colonies, Mr Anthony Greenwood, and a number of Mauritian Ministers. Evidence produced before the Select Committee shows, without any possible doubt, that the following Ministers took part in the proceedings: The Premier (Dr Seewoosagur Ramgoolam), the Minister of Social Security (Mr Abdool Razack Mohamed), the Minister of Industry, Commerce and External Communications (Mr Maurice Paturau, D.F.C.), the Minister of Local Government (Mr Sookdeo Bissoondoyal). As regards Mr Koenig, the minutes do not refer to his presence (Appendix K). The Chief Secretary's memorandum (Appendix M) mentions his attendance at certain discussions, without specifically referring to the meeting held on 23rd September 1965. Sir Gaëtan Duval categorically affirmed that Mr Koenig did not attend that meeting and Mr Paturau stated that he had no recollection of Mr Koenig being present. Record of the proceedings (Appendix K) indicates (i) the eight conditions on which Dr the Honourable Seewoosagur Ramgoolam undertook to obtain the approval of the local Council of Ministers and (ii) the acceptance thereof, in principle, by MM Mohamed (CAM) and Bissoondoyal (LFB). As regards the other participant, Mr Paturau, he had expressed dissent about the amount (£ 3m) of final compensation offered,

### IX—Before the Council of Ministers

39. The relevant parts of the minutes of the meeting held on 23rd September, 1965 (Appendix 'K') were transmitted to the Governor of Mauritius under cover of Colonial Office Despatch No. 423 dated 6th October 1965. (Appendix 'L'). The Select Committee notes that this document does not give any definite character to the proposals which Dr the Honourable S. Ramgoolam had undertaken to carry to the approval of his colleagues in the Council of Ministers. Hence, (i) defence and internal security would have to be negotiated, after independence (ii) projects to which the £3 m compensation would be devoted would be the subject of further discussions (iii) the British Government would use their good offices, without any firm guarantee of success, with the United States Government to secure concessions over sugar imports, supply of wheat and other commodities, to use labour and materials from Mauritius for construction works on the islands and (iv) to ensure that navigational and meteorological facilities, fishing rights and the possibility of using the air strip for emergency landing and refuelling of civil planes be made available to Mauritius. As regards the two other crucial points, namely, the return to Mauritius of the islands when no more needed and the exclusive right of Mauritius to 'the benefit of any mineral and oil discovered in or near the Chagos Archipelago', the United Kingdom Government simply took note, whilst stressing that the archipelago would remain under British Sovereignty.

40. The arrangements regarding defence and internal security appear, in more details, in the final communiqué issued at the end of the Conference, (para. 23) Hence, in the Memorandum (Appendix 'M') prepared by the Chief Secretary, Mr Tom Vickers, C.M.G., for the Council of Ministers and embodying the United Kingdom's reservations on the proposals agreed to in principle by the Premier, Mr Mohamed and Mr Bissoondoyal (Appendix 'K'), a significant change had occurred. Point (i) relating to the defence agreement had been replaced by the following: (i) the Chagos Archipelago would be detached from Mauritius and placed under British Sovereignty by Order in Council. And the last paragraph of the Memorandum invited the Government of Mauritius to give confirmation of his willingness 'to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago'. The Select Committee notes with concern that this unexpected proposition which had supposedly emerged from the discussions held on 23rd September 1965, but which is not contained in the original record of proceedings (Appendix 'K') did not strike the attention of any Mauritian Minister as being new and unwarranted.

41. The Council of Ministers met on 5th November 1965 and the names of the Ministers present are listed in Appendix 'N' of this Report. Telegram 247 from Mauritius to the Secretary of State (Appendix 'O') translates the views of the Council of Ministers on the Chief Secretary's memorandum (Appendix 'M') and reports the dissent of the P.M.S.D. Ministers, in relation to the inadequacy of the compensation offered. No dissentient voice was

recorded on the principle of (i) the detachment of the archipelago and (ii) the establishment of "defence facilities" thereon (Appendices 'P' & 'Q'). On the 11th November 1965, the P.M.S.D. Ministers resigned from the Coalition Government and in a press conference held the next day, they re-affirmed that their objection was not based on the principle of putting the islands at the disposal of the joint U.K./U.S. venture, but merely on the conditions under which such facilities have been granted, in complete indifference of the social and economic needs of Mauritius.

42. The United Kingdom's views on the last hour reservations of the Council of Ministers in regard to the excision came by way of telegram 313 dated 19th November 1965 (Appendix 'R'). It reasserts the hypothetical character of all future negotiations with the United States about sugar imports. The conditions under which the islands would be returned to Mauritius and prospections for oil and minerals permitted, are worth quoting:

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.
4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

43. The latest development as regards the eventual return of the islands to Mauritius when no more required is contained in a reply made by the British Prime Minister in the House of Commons, on 11th July, 1980, and which is reproduced hereunder:—

I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean Territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government. (1)

As regards the plea for employing Mauritian labour on construction works on the islands, the Select Committee is reproducing at Appendix 'S' of this report, an eloquent and self-explanatory exchange of correspondence between the Prime Minister of Mauritius and the British High Commissioner, as late as February/March 1971.

(1) House of Commons debates — Vol. 988, Col. 314.

44. The agreement of the Council of Ministers for the detachment of the Chagos Archipelago from Mauritius having been obtained at the sitting of 5th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addressed a confidential letter to Ministers on 10th November, 1965, conveying the substance of the public announcement to that effect that was to be made in the House of Commons later on the same day. Sir John's letter together with the text of a communique to be released immediately afterwards are herewith reproduced as annexures T and U respectively.

#### X—The Public Announcement

45. Before entering into the last stage of description of the circumstances which led to the excision of the Chagos Archipelago, the Select Committee wishes to summarize hereunder the sequence of events leading thereto and underline at the same time the responsibilities of the then Premier, Dr the Honourable Seewoosagur Ramgoolam and its Council of Ministers therein:—

- (i) In August 1964, an anglo-american survey of the islands takes place. On the 14th July preceding, the whole Council of Ministers is so informed by the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E. (Para. 33)
- (ii) In September 1965, the Mauritius Constitutional Conference is held in Lancaster House, London. *En marge* of these talks, the Premier is apprised in private of the joint UK/US project of using the islands for "defence" purposes. This information is conveyed by him to his fellow delegates and a delegation comprising the Deputy Leader of the Mauritius Labour Party, the Leader of the P.M.S.D., the Leader of the CAM and an Independent Member meets the Minister in Charge of Economic Affairs in the American Embassy, London, in an attempt to negotiate, in return for the use of the Chagos Archipelago, certain facilities from the United States of America. (Para. 37)
- (iii) On 23rd September 1965, the Secretary of State for the Colonies, Mr Anthony Greenwood, meets the Premier and certain Ministers of the Coalition Government. The discussions include the eventual detachment of the Chagos Archipelago. (Para. 38).
- (iv) On 5th November 1965, the Council of Ministers is invited to give *inter-alia*, its agreement to the detachment. The agreement is given, in principle. (Para. 41).
- (v) On 8th November, 1965, the British Indian Ocean Territory Order is issued. (Para. 10).
- (vi) On 10th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addresses a confidential letter to Ministers informing them of the United Kingdom's Government final decision on the issue and attaching the text of a press release in that connection. (Para. 44).

The above catalogue of events is most important for the comprehension of the most undignified attitude of certain Labour Ministers of the last Government who deponed before the Select Committee. (Para. 25).

46. Evidence shows that Dr the Honourable Seewoosagur Ramgoolam came back from the London Constitutional Conference on 11 October 1965 and left again for the United Kingdom on 29 November 1965, for medical treatment. He returned on 3 January 1966.

47. As already indicated by Sir John Shaw Rennie, K.C.M.G., C.B.E. (para. 44), the Secretary of State for the Colonies, Mr Anthony Greenwood, made on 10th November, 1965, an announcement in the House of Commons regarding 'new arrangements for the administration of certain islands in the Indian Ocean.' The text of that communication was released in Mauritius by the Chief Secretary's Office on the same day. (Appendix 'U')

48. On 14th December 1965, a parliamentary question was put to the Premier and Minister of Finance requesting a comprehensive statement 'on the question of the sale or hire of the island of Diego Garcia to either the United Kingdom Government or the United States of America or to both jointly' and certain other related matters. (Appendix F.) Honourable Guy Forget, on behalf of the Premier and Minister of Finance, replied to the question and reproduced *verbatim* the reply made by the Secretary of State for the Colonies, in the House of Commons, on 10th November, 1965 (Appendix U).

49. On 6th December 1982, when Sir Seewoosagur Ramgoolam appeared before the Select Committee, he declared, to the Committee's astonishment and dismay, that the statement made in the Legislative Assembly, on 14th December 1965, by Mr Guy Forget, came as a surprise to him. 'Something was done mysteriously', he added. Indeed, he further stated: 'When I came back from the Conference to Mauritius, I was faced with the statement made to a question put in Parliament, by the late Mr Forget, which I said, as I still maintain, is a mystery to me.' And Sir Seewoosagur Ramgoolam went further as to declare that as late as 1972, when, as Prime Minister, he accepted on behalf of the Mauritius Government the receipt of a sum of £ 650,000 from the United Kingdom Government 'in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago' (Appendix W), he was still unwillingly bound by Mr Forget's statement.

When asked by the Select Committee to comment on Sir Seewoosagur Ramgoolam's observations that, "Mr Forget's statement came as a complete surprise to him and that there is a mystery surrounding Mr Forget's statement on the 14th December," Sir Veerasamy Ringadoo replied:—"If he had said that, then his recollection is as good as mine." Sir Veerasamy, who was then Minister of Education and Cultural Affairs, did not remember having seen the text of the communique (Appendix 'T') which the Governor of Mauritius addressed to Members of the Council of Ministers on 10th November 1965.

That element of surprise in the face of Honourable Forget's statement was also shared by Sir Harold Walter.

### **XI. The Displaced Ilois**

50. On 3rd October 1980, the Public Accounts Committee, a Sessional Select Committee of the Legislative Assembly produced a detailed report on the "financial and other aspects of the 'sale' of Chagos Islands and the resettlement of the Displaced Ilois." The report is reproduced at Appendix 'Z'.

The Committee wishes to underline a new disturbing element in the question of the resettlement of the displaced population of the excised islands. Deponing before the Select Committee on 6th December 1982, Sir Seewoosagar Ramgoolam stated that the resettlement issue was "taken up here in Mauritius" after the Constitutional Conference of September 1965. He stated that the issue was so extraneous to the proceedings at Lancaster House that, when he wrote to the British High Commissioner, on 4th September 1972, acknowledging receipt of a sum of £ 650,000 from the British Government "in full and final discharge" of the United Kingdom's undertaking given in 1965 "to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago" (Appendix 'W'), he was simply acting in the "context" of the unexpected reply made by Mr Forget in the Legislative Assembly on 14th December 1965 (Appendix 'F').

In the light of documentary evidence produced, the Committee cannot but reject Sir Seewoosagar's submission. Item (iii) of the Record of Meeting held at Lancaster House, on 23rd September 1965, (Appendix 'K') indicates that the question was raised with him on that occasion. And Colonial Office Despatch No. 423 of 6th October 1965 (Appendix 'L') reports that he agreed that the document under reference was an accurate report of the proceedings.

On 4th November 1965, a Memorandum by the Chief Secretary (Appendix 'M') conveying the points agreed upon at the meeting of 23rd September 1965, was circulated to the then Council of Ministers and item (iii) thereof again alluded to the resettlement question.

Hence, as far back as September 1965, documents relating to such a delicate issue were in Government files and the Committee, whilst deploring Sir Seewoosagar's inaccurate statement before the Select Committee, strongly condemns the then Government for its indifference towards the displaced Ilois. Although the amount of compensation had been paid into the public treasury as far back as 1972, it was not until January 1977, after Mr Prosser's visit to Mauritius as a result of strong public agitation that, as a measure preliminary to some sort of rehabilitation, a survey of the persons involved was conducted.



## XII. The Latest Developments

51. The Committee feels much comfort in the Resolution contained in the Political Declaration voted at the Non-Aligned Movement's New Delhi Summit Meeting, 1983, about Diego Garcia. (Appendix 'X'). It fully concurs with the views expressed to the effect that "the establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other states". It sincerely hopes that this new Resolution, added to those already adopted by international organisations, such as the United Nations General Assembly (Appendix 'D') and the Organisation of African Unity (Appendix 'E') will contribute to the return to Mauritius of that part of its territory.

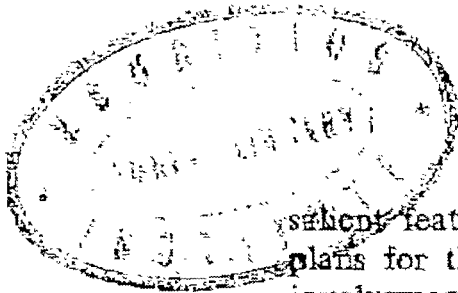
## XIII. Conclusions

52. Five main themes emerge from the Committee's proceedings and they are set out hereunder as a concluding chapter to this report.

### A. *The political climate prior to the Constitutional Conference, 1965*

All the political parties which appeared before the Committee, —with the exception of the P.M.S.D. whose stand will be commented upon in the subsequent sub-paragraph— were unanimous in their submission (para. 25) that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference of September 1965. So much so that none of them did think it appropriate to make their stand known before leaving for the Constitutional talks. Sir Seewoosagar Ramgoolam alleged that the proposition of the U.K. Government was first communicated to him in private talks while the Conference was in progress. Honourable Aneerood Jugnauth, Q.C., then a member of the I.F.B. delegation, stated to the Committee that before the different delegations to the 1965 Constitutional Conference parted, Sir Seewoosagar Ramgoolam had come to the desk where the I.F.B. delegation was and had informed them that he had had private talks with the British Government and had agreed, on behalf of the Government of Mauritius, to a request for communications facilities to be installed at Diego Garcia. He added:—"When he told us that, we took note and we had not much to say about it."

Evidence produced before the Committee does not support the claim that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference. Amongst others, the more



salient features indicative of the U.K. Government's definite plans for the militarization of the islands with United States involvement and their possible excision therefor are listed chronologically hereunder: —

1. On 21st February 1964, Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in a broadcast styled "London Calling Mauritius" hinted, in most unequivocal terms, at the U.K.'s decision of using Mauritius and its dependencies as a unit for its defence strategy in the Indian Ocean (para. 31). Report of this broadcast was lengthily reproduced in the local press. (Appendix 'A 1').
2. On 4th July 1964, the *Economist*, reviewing the U.K.'s military strategy as a result of the political uncertainties in Aden, called for a "military effort" for the setting up of a new Indian Ocean base and stressed that "this way of thinking points unerringly to some kind of Anglo-American exercise." Again, this article was taken up in the local press. (Appendix 'A 2').
3. On 22nd July 1964, the Australian paper "Daily News" revealed that talks had been initiated between Washington and Whitehall for a joint military venture in the Indian Ocean and pointed Mauritius as a logical base for such operation both for reasons of strategy and political stability. This excerpt was also published in the local press. (Appendix 'A 3').
4. On 30th August 1964, Reuter confirmed that "high level discussions" were in progress for providing new American bases "on British islands in the Indian Ocean" and reported that a technical survey had already been effected. (Appendix 'A 4').
5. On 31st August 1964, the "Daily Telegraph" directly alluded to the possibility of using Diego Garcia as a Polaris communications centre. (Appendix 'A 5').
6. On 5th September 1964, the *Economist* carried a more direct allusion to the "present Anglo-American search for a communications centre (and may be something more) in the Seychelles or one of the Mauritius dependencies." (Appendix 'A 6').
7. On 23rd September 1964, a group of Mauritian nationals residing in London lodged in the British press a strong protest against the possible installation of "military bases on Mauritian territory and on other islands in the Indian Ocean." This denunciation was reproduced in the local press. (Appendix 'A 7').

8. On 10th November 1964, Honourable B. Ramlallah intervened rather lengthily on the question (Appendix 'H') in the Legislative Assembly. His intervention succeeded in obtaining from Government side two contradictory statements. On the same day, Honourable Satcam Boolell, then Minister of Agriculture and Natural Resources, interjected that Government was not aware of the project. This assertion will be contradicted on 14th December 1964 when the Chief Secretary will confess that indeed "a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius" had been in progress and that the Council of Ministers—of which Honourable Boolell was a member—had been duly informed. (Appendix 'I'). Such information was, indeed, communicated to the Council of Ministers by the then Governor-General on 14th July 1964. (Para. 33).
9. On 16th January 1965, the *Economist*, in an article headed "Strategies West and East" confirmed that a joint Anglo-American survey of the islands had been effected and, for the first time, hinted at the necessity of excising the Aldabra Group from the Seychelles and Diego Garcia from Mauritius, by an Order-in-Council. (Appendix A 8).
10. On 5th April 1965, Reuter made mention of a statement in the House of Commons by Mrs Eirene White, then Under-Secretary of State for the Colonies, who indicated that consultations about the joint Anglo-American survey of the islands had taken place with the Mauritian authorities, at two levels: namely, with Dr. the Honourable Seewoosagur Ramgoolam, in July 1964 and with the Council of Ministers in November of the same year. (Appendix 'A 9').
11. On 9th May, 1965, the Washington Post revealed that, as a result of the technical survey, Diego Garcia stood first on the priority list drawn by the American and British authorities as a recommended location for a joint Anglo-American military facility in the Indian Ocean and referred to the necessity of entrusting the administration of the island to London. The paper revealed that the United States had requested that the "entire archipelago be acquired" and that such exercise should be completed before the forthcoming Constitutional Conference. This

- illuminating article even hinted at the U.S. idea "wherever possible, to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere." (Appendix 'A 10').
12. On 3rd June 1965, news broke out in the local press that the Anglo-American military base would, in fact, be installed on the dependencies of Mauritius and of the Seychelles and that a sum of Rs 135 m had been voted for the acquisition of the islands and the displacement of their inhabitants. (Appendix 'A 11').
  13. On 15th June 1965, Dr. M. Curé, by way of a parliamentary question, urged Government to "express to the British Government the inadvisability of entering into any agreement with the United States of America" for the eventual acquisition of the dependencies of Mauritius, before the forthcoming Constitutional Conference. The Chief Secretary replied that he had nothing to add to the information communicated by him to Mr Ramlallah on on 14th December 1964. (Appendix '1')
  14. On 19th June 1965, the local press carried information to the effect that the joint U.K./U.S. military project in the Indian Ocean was on the agenda of the Commonwealth Prime Ministers' Conference which was then in session and requested the prompt intervention of the Premier of Mauritius and of the Government. The appeal fell on deaf ears. (Appendix 'A 12').
  15. On 27th July 1965, the local press again reported that the Government of Mauritius had been put in presence of the whole scheme, including the excision of the islands and that the Premier had offered, as a counter-proposal, the lease thereof. (Appendix 'A 13').

This long—but not complete—catalogue of events translates, in the Committee's opinion, the psychosis prevalent in the public mind, both in Mauritius and overseas, on the issue, prior to the Constitutional Conference of September 1965. It is a matter of regret therefore, that none of the political parties which, at that time, formed part of the Coalition Government, did think it fit to allay the fears of the population. Hence, the Select Committee strongly condemns the passive attitude of the political class represented in the then all-party Government and which formed part of the Mauritian delegation which attended the Constitutional Conference of September 1965. Their silence, in the light of such repeated warnings from responsible sectors of public opinion, bordered, in the Committee's judgment, on connivence.

Even more strongly, the Select Committee condemns the attitude of the then Ministers who, as will be commented upon at sub-paragraph (C), gave their agreement to the excision of the Chagos Archipelago and to its use for U.K./U.S. defence interests.

B. *The attitude of the Parti Mauricien Social Démocrate (P.M.S.D.)*

The position of the P.M.S.D. on the excision of the Chagos Archipelago was made known to the Select Committee by Sir Gaëtan Duval when he deponed on 12th November 1982. He claimed that the P.M.S.D. had not been against the use of the archipelago for a joint U.K./U.S. venture, but had been dissatisfied with the conditions attached to the deal. The sovereignty of Mauritius ought to have been preserved and negotiations for terms most beneficial to the social and economic betterment of the Mauritian population, subsequently conducted with any nation interested in the use of the islands. Sir Gaëtan explained that the then Leader of the P.M.S.D. even refused to attend the meeting held on 23rd September 1965, as a proof that the party was adamant on the excision issue. Referring to the reasons for the resignation of P.M.S.D. Ministers from Government, Sir Gaëtan had this to say: "*Je dois vous dire qu'à ce moment là nous démissionnons non pas parce que nous étions contre l'idée de la construction d'une base américaine, mais parce que nous étions contre l'idée de la cession d'une partie du territoire mauricien*". He will later state: "*Nous étions d'accord sur le principe de la base anglo-américaine à Diego Garcia mais nous refusions la cession.*"

The Select Committee regrets not being able to accept Sir Gaëtan's submission. On no less than three occasions, documentary evidence will establish without the least possible doubt that the P.M.S.D. was indeed agreeable, in principle, to the excision of the Chagos Archipelago but objected to the terms thereof. These occasions are listed hereunder:—

- (i) the Minutes of the Council of Ministers indicate that on 5th November 1965, the Council was called upon to give "their agreement that the British Government should take necessary legal steps to detach the Chagos Archipelago." On that day, the P.M.S.D. Ministers intimated that "while they were agreeable to detachment of the Chagos Archipelago they must reconsider their position as Members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate". (Appendix 'P'). These Minutes were approved without any amendment to that effect, on 12th November 1965, (Appendix 'Q') in the absence of the P.M.S.D. Ministers who had resigned the day before.

- (ii) Public confirmation of the Minutes of the Council of Ministers held on 5th November 1965 (Appendix 'P') was however given at a press conference held by the leaders of that party on 12th November 1965 to explain their resignation as Ministers. The following excerpts from press reports are worth quoting:—

*Je tiens à déclarer de la façon la plus formelle que le P.M.S.D. n'est pas contre le principe de céder les Chagos ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident. Le P.M.S.D. en approuve le principe: il est en désaccord sur les termes et les conditions de cette cession. (Mr Koenig) (1)*  
*Nous ne sommes pas contre l'excision des îles pour les besoins militaires de l'Ouest. (Mr Koenig) (2)*

- (iii) On 14th December 1965, Mr Duval, by way of a parliamentary question invited Government to give an opportunity to the Legislative Assembly "to discuss the detachment of the Chagos Archipelago from Mauritius and its inclusion in the British Indian Ocean Territory, specially in view of the stand taken by India and other Afro-Asian countries". Mr Forget, on behalf of the Premier and Minister of Finance, rightly referred Mr Duval to the press conference of the P.M.S.D. held on 12th November 1965 where no disagreement against the excision was expressed by the party. The supplementary question put by Mr. Duval re-affirmed that the P.M.S.D. was concerned by the conditions of the excision and not by the excision itself. (Appendix 'Y').

Hence, the plea of the P.M.S.D.'s opposition to the excision of the islands does not hold water.

### C. *The existence of documents*

Both Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, when they deponed before the Select Committee (para. 25A) stated that at no time were they put in presence of any document relating to the excision of the islands. They argued that there never existed any agreement thereon nor any minutes of proceedings of possible discussions on the issue. This statement was made not only to the Committee but was very often repeated in the Legislative Assembly, in the past, in reply to interventions from all sides of the House.

(1) *Le Mauricien*—13th November 1965

(2) *L'Express*—13th November 1965

The Select Committee is in a position to reject these statements. In spite of Sir Seewoosagur's declaration to the effect that no Minutes whatsoever had been produced to him, the Select Committee has been able to obtain at least two documents from files kept at the Prime Minister's Office and which indicate the contrary. They are listed hereunder:—

- (i) The record of the meeting held at Lancaster House and which outlines the points agreed upon between the Secretary of State for the Colonies on one side and on the other Dr the Honourable Seewoosagur Ramgoolam, the Honourable Abdool Razack Mohamed and the Honourable Sookdeo Bissoondoyal. The document is reproduced at Appendix 'K' of this report.
- (ii) Colonial Office despatch No. 423, dated 6th October, 1965, which confirms that the contents of the record mentioned above had already been agreed in London with Dr the Honourable Seewoosagur Ramgoolam "and by him with Mr Mohamed, as being an accurate record of what was decided". (Appendix 'L').
- (iii) Furthermore, on 5th November 1965, the Council of Ministers, including Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, gave their agreement to the effect that, "the British Government should take the necessary legal steps to detach the Chagos Archipelago." (Appendix 'P').

In these circumstances, the Select Committee cannot but record its indignation at the attitude of these Senior Ministers of the then Government who, before the Committee, in the Legislative Assembly, and in public pronouncements, denied the existence of any documents relating to the detachment of the islands. In the same breath, the Select Committee wishes to denounce the then Council of Ministers which did not hesitate to agree to the detachment of the islands.

#### D. *The United States Involvement and Defence Considerations*

The Select Committee again rejects the submission made by the then Leaders of the Mauritius Labour Party and the Independent Forward Bloc to the effect that, from information made available to them, in 1965, the islands would be used as a communications centre only with no United States involvement.

The United States interest in the deal was evident ever since 1964 when the technical survey of the islands was being carried out. The evidence is contained in the then Chief Secretary's reply to Mr Ramlallah, (Appendix T). Again, at the Constitutional

Conference of September 1965, the United States involvement was such that a delegation headed by the Deputy Leader of the Mauritius Labour Party visited the Minister in Charge of Economic Affairs at the American Embassy, in London, in an attempt to secure, for Mauritius, some benefits in return for the excision. (Para. 37). And later, the record of the meeting held at Lancaster House on 23rd September 1965, will, in no uncertain terms, at items (iv) (v) and (vi) bear testimony of the U.S. presence in the deal. (Appendix 'K').

In addition, all documents exchanged between the Secretary of State for the Colonies and the Mauritius Government preceding and following the then Council of Ministers' agreement to the excision (Appendices 'L', 'M', 'O', 'R') bear reference to a joint U.K./U.S. venture. Some of the letters, including the memorandum submitted to the Council of Ministers by the Chief Secretary on 4th November 1965 (Appendix 'M') were even boldly headed "U.K./U.S. Defence Interests".

Here again, the Select Committee cannot but strongly denounce such deliberate misleading of public opinion on the matter.

#### **E. *The Blackmail Element***

Sir Seewoosagur Ramgoolam's statement before the Select Committee is highly indicative of the atmosphere which prevailed during the private talks he had, at Lancaster House, with the British authorities. He averred that he was put before the choice of either retaining the archipelago or obtaining independence for his country, but refused to describe the deal as a blackmail. Sir Gaëtan Duval argued that the choice was between the excision and a referendum on independence. This contradiction is substantially immaterial to the Committee. What is of deeper concern to the Select Committee is the indisputable fact that a choice was offered through Sir Seewoosagur to the majority of delegates supporting independence and which attitude cannot fall outside the most elementary definition of blackmailing. Sir Harold Walter, deponing before the Select Committee on 11th January 1983, will even go to the length of stating that the position was such that, had Diego Garcia which "was, certainly, an important tooth in the whole cogwheel leading to independence" not been ceded, the grant of national sovereignty to Mauritius "would have taken more years probably".

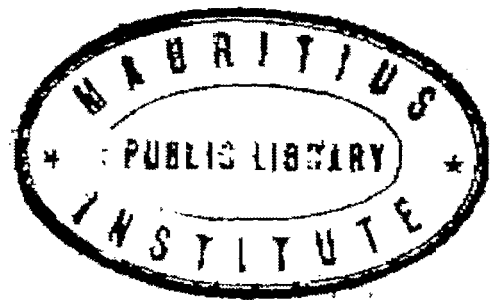


The Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the General Assembly of the United Nations on 14th December 1960 (Appendix 'C') clearly sets out at para. 5 that the transfer of power to peoples living in "Trust and Non-Self Governing Territories or all other Territories" should be effected "without any conditions and reservations". In addition, at para. 6, it expressly lays down that, "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

Hence, notwithstanding the blackmail element which strongly puts in question the legal validity of the excision, the Select Committee strongly denounces the flouting by the United Kingdom Government, on these counts, of the Charter of the United Nations.

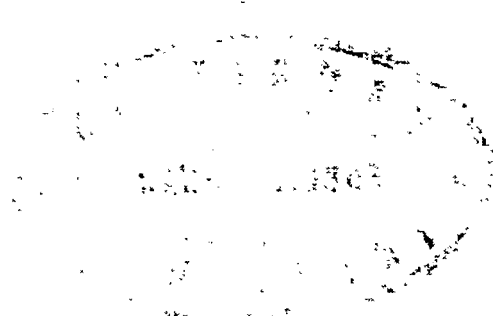
1st June 1983.

JEAN-CLAUDE DE L'ESTRAC  
*Chairman*



List of Persons who Deponed Before the Select Committee and Date of Hearing

1. Sir Charles Gaëtan Duval, Q.C.—Leader of the Opposition—12th November 1982;
2. Sir Seewoosagar Ramgoolam, G.C.M.G. — 6th December 1982.
3. Sir Veerasamy Ringadoo, Kt. — 13th December 1982.
4. Mr Maurice Paturau, D.F.C., C.B.E. — 13th December 1982.
5. Sir Harold Walter, Kt. — 11th January 1983.
6. Sir Satcam Boolell, Kt. — 11th January 1983.
7. The Hon. Aneerood Jugnauth, Q.C. — Prime Minister of Mauritius — 1st February 1983.
8. Sir René Maingard de la Ville-as-Offrans, C.B.E. — 8th February 1983.



## STATUTORY INSTRUMENTS

1965 No. 1920

## Overseas Territories

The British Indian Ocean Territory Order 1965

Made 8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1965

Present

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the British Indian Ocean Territory Order Citation, 1965.

2. (1) In this Order—

Inter-  
pretation.

“ the Territory ” means the British Indian Ocean Territory;

“ the Chagos Archipelago ” means the islands mentioned in schedule 2 to this Order;

“ the Aldabra Group ” means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948 and mentioned in schedule 3 to this Order.

(2) The Interpretation Act 1889 shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

3. As from the date of this Order—

British  
Indian  
Ocean Terri-  
tory to be a  
separate  
colony.

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

Establish-  
ment of office  
of Com-  
missioner.

APPENDIX B—*continued*

Powers and  
duties of  
Com-  
missioner.

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Oaths to be  
taken by  
Com-  
missioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the forms set out in Schedule I to this Order.

Discharge of  
Commissioner's func-  
tions during  
vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such persons as Her Majesty may designate by instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section, he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section—

(a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and

(b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of  
Commissioner's func-  
tions by  
deputy.

8. (1) The Commissioner may, by instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

APPENDIX B—*continued*

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instruments under the Official Stamp of the Territory.

9. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith. Official Stamp.

10. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory, as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise— Constitution of offices.

(a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and

(b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

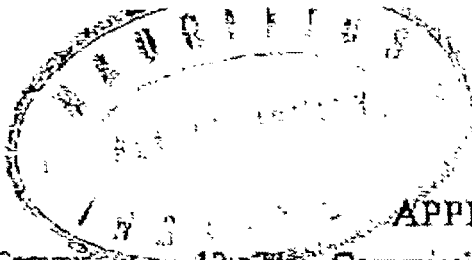
11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct. Power to make laws.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.



## APPENDIX B—continued

Commissioner's powers of pardon, etc.

12. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Concurrent appointments.

13. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

- (a) another person may be appointed substantively to that office;
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Disposal of land.

14. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

Existing laws.

15. (1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section „enactments” includes any instruments having the force of law.

Exercise of jurisdiction by courts.

16. (1) The Commissioner, with the concurrence of the Governor of any other colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other colony.

(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.

APPENDIX B—*continued*

17. (1) Notwithstanding any other provisions of this Order but subject to any law made under section 11 thereof, Judicial proceedings.

(a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the islands comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;

(b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph (a) of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;

(c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph (a) or paragraph (b) of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section "judgment" includes decree, order, conviction, sentence and decision.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955 are amended as follows:— Amendment of Seychelles Letters Patent 1948 and Mauritius (Constitution) Order 1964, etc.

(a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1(1);

(b) in the first schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964 is amended by the insertion of the following definition immediately before the definition of "the Gazette":—

"Dependencies" means the islands of Rodrigues and Agalega, and the St. Brandon Group of islands often called Carajos";

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960 as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963 is further amended by the deletion from the definition of "the Colony" of the words "as defined in the Seychelles Letters Patent 1948".

APPENDIX B—*continued*

19. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order). Power reserved to Her Majesty.

(*sd*) W. G. AGNEW

## SCHEDULE I

*Section 6*

## OATH (OR AFFIRMATION) OF ALLEGIANCE

I,.....do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF  
THE OFFICE OF COMMISSIONER

I,.....do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

## SCHEDULE 2

*Section 2(1)*

Diego Garcia	Salomon Islands
Egmont or Six Islands	Trois Frères, including Danger Island and
Péros Banhos	Eagle Island

## SCHEDULE 3

West Island	Cocoanut Island
Middle Island	Euphratis and other small Islets.
South Island	

*Note:* The British Indian Ocean Territory Order 1965 was amended, as follows, by the British Indian Ocean Territory (Amendment) Order 1968:—

(a) In the definition of "the Aldabra Group" in section 2(1) the words "as specified in the First Schedule to the Seychelles Letters Patent 1948 and " were omitted;

(b) in schedule 2 for the words—

"Trois Frères, including Danger Island and Eagle Island," there were substituted the words—

"Three Brothers Islands

Nelson or Legour Island

Eagle Islands

Danger Islands."; and

(c) in schedule 3 the words "Polymnie Island" were inserted immediately after the words "Cocoanut Island".



APPENDIX B—*continued*  
OVERSEAS TERRITORIES

The British Indian Ocean Territory Royal Instructions 1965

Dated 8th November 1965

Elizabeth R.

Instructions to Our Commissioner for the British Indian Ocean Territory or other Officer for the time being performing the functions of his office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

1. (1) These Instructions may be cited as the British Indian Ocean Territory Royal Instructions 1965. Citation, commencement and revocation.

(2) These Instructions shall come into operation on the same day as the British Indian Ocean Territory Order 1965 and thereupon the Instructions issued to Our Governor and Commander-in-Chief for Mauritius and dated the 26th February 1964, and the Instructions issued to Our Governor and Commander-in-Chief of the Colony of Seychelles and dated the 11th March 1948, and the Additional Instructions issued to the said Governor and Commander-in-Chief and dated the 2nd May 1960 and the 29th July 1963, shall, without prejudice to anything lawfully done thereunder, and in so far as they are, respectively, applicable to the islands comprised in the British Indian Ocean Territory as defined in the British Indian Ocean Territory Order 1965, cease to have effect in respect of those islands.

2. — (1) In these Instructions "the Commissioner" means the Commissioner for the British Indian Ocean Territory and includes the person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of his office. Interpretation.

(2) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting these Instructions and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

3. — (1) These Instructions, so far as they are applicable to any functions of the office of Commissioner to be performed by such person as is mentioned in paragraph (1) of the preceding clause, shall be deemed to be addressed to, and shall be observed by, such person. Instructions to be observed by deputy.

(2) Such person may, if he thinks fit, apply to Us through a Secretary of State for instructions in any matter; but he shall forthwith transmit to the Commissioner a copy of every despatch or other communication addressed to Us.

4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:— Rules for the enactment of laws.

(1) All laws shall be styled Ordinances and the words of enactment shall be „ Enacted by the Commissioner for the British Indian Ocean Territory ”.

APPENDIX B—*continued*

(2) Matters having no proper relation to each other shall not be provided for by the same Ordinance; no Ordinance shall contain anything foreign to what the title of the Ordinance imports; and no provision having indefinite duration shall be included in any Ordinance expressed to have limited duration.

(3) All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.

(4) All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

Certain Ordinances not to be enacted without instructions.

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say—

- (1) any Ordinance for the divorce of married persons;
- (2) any Ordinance whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (3) any Ordinance affecting the currency of the British Indian Ocean Territory or relating to the issue of bank notes;
- (4) any Ordinance imposing differential duties;
- (5) any Ordinance the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty;
- (6) any Ordinance affecting the discipline or control of Our Forces by land, sea or air;
- (7) any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced;
- (8) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;

## APPENDIX B—continued

- (9) any Ordinance containing provisions which have been disallowed by Us;

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except an Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to Us together with his reasons for so enacting the same.

6. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance duly authenticated under the Official Stamp of the British Indian Ocean Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance. Ordinances to be sent through Secretary of State.

7. As soon as practicable after the commencement of each year, the Commissioner shall cause a complete collection to be published, for general information, of all Ordinances enacted for the British Indian Ocean Territory during the preceding year. Ordinances to be published yearly.

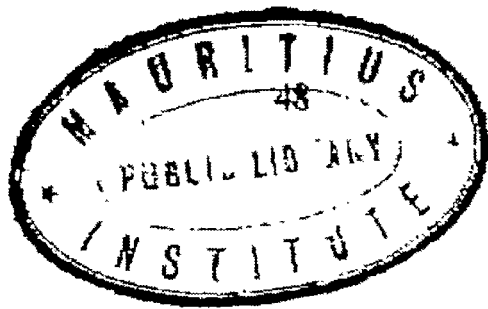
8. Every appointment by the Commissioner of any person to any office of employment shall, unless otherwise provided by law, be expressed to be during pleasure only. Appointments to be during pleasure.

9. (1) Before disposing of any lands to Us belonging in the British Indian Ocean Territory the Commissioner shall cause such reservations to be made therefrom as he may think necessary for any public purpose. Disposition of Crown lands.

(2) The Commissioner shall not, directly or indirectly, purchase for himself any land or building in the British Indian Ocean Territory to Us belonging without Our special permission given through a Secretary of State.

10. Whenever any offender has been condemned by the sentence of any court having jurisdiction in the matter to suffer death for any offence committed in the British Indian Ocean Territory, the Commissioner shall call for a written report of the case from the judge who tried it, and for such other information derived from the record of the case or elsewhere as he may require, and may call upon the judge to attend upon him and to produce his notes; and if he pardons or respites the offender, he shall as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reason for his decision. Power of pardon in capital cases.

Given at Our Court at St. James's this eighth day of November 1965 in the fourteenth year of Our Reign.



1514 (XV)

Declaration on the granting of Independence to Colonial Countries and Peoples

The General Assembly,

*Mindful* of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

*Conscious* of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Recognizing* the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

*Aware* of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

*Considering* the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

*Recognizing* that the peoples of the world ardently desire the end of colonialism in all its manifestations,

*Convinced* that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

*Affirming* that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law,

*Believing* that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

APPENDIX C—*continued*

*Welcoming* the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly peaceful trends towards freedom in such territories which have not yet attained independence,

*Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

2. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.

14th December 1960.

948th plenary meeting

## United Nations General Assembly Resolution 2066

## QUESTION OF MAURITIUS

The General Assembly,

*Having considered* the question of Mauritius and other islands composing the Territory of Mauritius,

*Having examined* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius,

*Recalling* its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

*Regretting* that the administering Power has not fully implemented Resolution 1514 (XV) with regard to that Territory,

*Noting with deep concern* that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof,

1. *Approves* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius and endorses the conclusions and recommendations of the Special Committee contained therein;
2. *Reaffirms* the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance with General Assembly Resolution 1514(XV),
3. *Invites* the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV);
4. *Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity;
5. *Further invites* the administering Power to report to the Special Committee and to the General Assembly on the implementation of the present resolution;
6. *Requests* the Special Committee to keep the question of the Territory of Mauritius under review and to report thereon to the General Assembly at its twenty-first session.

1398th plenary meeting, 16 December 1965

## RESOLUTION ON THE DIEGO GARCIA

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July, 1980.

*Pursuant* to article 1, para. 2, of the Charter of the Organization of African Unity, which stipulates 'The Organization shall include the continental African States, Madagascar and other islands surrounding Africa',

*Considering* that one of the fundamental principles of the Organization is the 'respect for the sovereignty and territorial integrity of each state',

*Aware* of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the Organization of African Unity,

*Recognizing* that Diego Garcia was not ceded to Britain for military purposes,

*Realising* that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of Peace,

*Demands* that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

DIEGO GARCIA — SALE OR HIRE — (No. A/33) — Mr J.R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the sale or hire of the Island of Diego Garcia to either the United Kingdom Government or to the Government of the United States of America or both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr. Forget on behalf of the Premier and Minister of Finance:—

I would refer the Honourable Member to the following communique issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(Communique)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME  
WEDNESDAY 10th NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:—

"With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north east of Mauritius, and Aldabra, Farquhar and Desroches in the western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate."

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations.



## MAURITIUS CONSTITUTIONAL CONFERENCE — 1965

## Mauritius Delegation

The Mauritius Labour Party ...	...	Sir Seewoosagar Ramgoolam Hon. G. Forget Hon. V. Ringadoo Hon. S. Boolell Hon. H. Walter Hon. R. Jomadar Hon. R. Jaypal Dr the Hon. L. R. Chaperon Hon. V. Govinden, M.B.E. Hon. H. Ramnarain Hon. R. Modun Hon. S. Veerasamy Dr the Hon. J. M. Curé
The Parti Mauricien Social Démocrate ...	...	Hon. J. Kœnig, Q.C. Hon. L. R. Devienne Hon. C. G. Duval Hon. J. C. M. Lesage Hon. H. Rossenkhan
The Independent Forward Bloc ...	...	Hon. S. Bissoondoyal Hon. A. W. Foondun Hon. D. Basant Rai Hon. A. Jugnauth Hon. S. Bappoo
The Muslim Committee of Action ...	...	Hon. A. R. Mohamed Hon. A. H. Osman Hon. H. R. Abdool
Independent Members ...	...	Hon. J. M. Paturau, D.F.C. Hon. J. Ah-Chuen

Extract from Debates No. 23 of 10th November, 1964 — Adjournment

Mr. B. Ramlallah (Poudre d'Or) — *Anglo-American Military Base*

Sir, as we have been speaking of America and Americans, there is a very pertinent question which is in the air about the projected base in Mauritius or at Diego. I think if the Government is able to do so, if it is not going to reveal a secret, the sooner it makes a declaration about that projected base the better it will be. Even the British Press is writing about it. There is much wild talk going around it in Mauritius. In India, Pakistan, everywhere people are talking about it, and we do not know what is the foundation of the talk. I understand even Mrs Bandaranaike has said in a press interview that she is opposed to the base in this part of the world.

Anyway I think the sooner something is said about it, the better it will be for the Government because people think that Government is in a way connected with it. Probably £ 125m or £ 115m . . .

Mr Boolell: The Government is not aware of it.

Mr Ramlallah: The Minister has come to my rescue. If this Government is not aware of it, I hope the Premier will stand up and say that we have not been consulted, that something is being done behind our back. There is something in the air there is no doubt about it.

Prospection is going on; we know that a lot of experts have come to Mauritius and surprisingly enough the Government has not been made aware. It is time the Government makes a declaration and says bluntly to the Imperial Government „ We have heard of that. You should tell us what is in store. ” We have heard something very painful — that America wants to have the base at Diego, which was supposed to be our colonial territory and which would then be cut off from us. They want to do it in order not to give us the £ 125m or whatever it is. That is something which makes us think seriously and I hope Government will give it all the seriousness which it deserves.

No. 19085

14th December, 1964

On the adjournment of the Legislative Assembly on 10th November, you referred to speculation about defence installations.

The position is that a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius, has been in progress. The results of the survey are still being examined and no decisions have been taken either by the British or by the American Government as to their respective requirements. The Council of Ministers was notified of the survey in advance and will be consulted about further steps in due course.

I am circulating a copy of this letter to other members of the Assembly and releasing it to the Press in the usual way.

TOM VICKERS  
*Chief Secretary*

The Hon. B. Ramlallah, M.L.A.  
c/o Mauritius Times  
Port Louis.

Extract from Debates No. 15 of 15th June, 1965

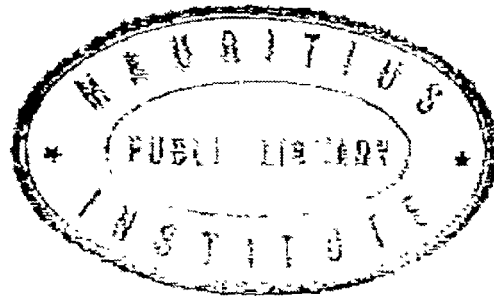
Acquisition of Dependencies of Mauritius by the U.S.A.

(No. A/30) Dr J. M. Coré (Nominated Member) asked the Chief Secretary whether the Government has been approached for the acquisition of our dependencies or part thereof by the United States of America for military purposes. If so, will he make a statement thereon and state whether the Government will

(a) express to the British Government the inadvisability of entering into an agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next; and

(b) ascertain the presence of oilfields in our dependencies before alienating them?

Mr Vickers: I have nothing to add to the information I conveyed to Hon. Members of the Legislative Assembly by the circulation of the copy of the letter which I addressed to the Hon. Member for Poudre d'Or on the 14th December, 1964, after he had raised the matter on the adjournment of the Legislative Assembly on the 10th November, 1964.



Extract from Record of Meeting held in Lancaster House  
on Thursday, 23 September, 1965, between the Colonial  
Secretary (Mr Greenwood) and Mauritian Ministers

*Paragraphs 22 and 23*

22. Summing up the discussion, the Secretary of State asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following :—

- i. negotiations for a defence agreement between Britain and Mauritius;
- ii. in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- iii. compensation totalling up to £3m, should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
- iv. the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
- v. that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
- vi. the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:
  - a. Navigational and Meteorological facilities;
  - b. Fishing Rights;
  - c. Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers;
- vii. that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;
- viii. that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. Sir S. Ramgoolam said that this was acceptable to him and Messrs Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

Colonial Office Despatch to Governor of Mauritius No. 423 dated 6 October, 1965

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of U.K./U.S. Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers. This record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)-(viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be negotiated between the British and Mauritius Governments before Independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).

I have the honour to be,

etc.

C M (65) 183

4th November, 1965

COPY No. 19

## COUNCIL OF MINISTERS

*UK/US Defence Interests in the Indian Ocean*

## MEMORANDUM BY THE CHIEF SECRETARY

As Council is aware, the establishment of a communications centre and supporting defence facilities on Diego Garcia by the U.S. Government for joint UK/US use was further discussed in London in September by the Secretary of State for the Colonies with the Premier, the Minister of Social Security, the Minister of Industry, the Minister of Local Government and the Attorney-General. The Secretary of State explained that a lease would not be practicable from the point of view of the British and the American Governments. The Ministers were also informed of the difficulties in the way of obtaining a *quid pro quo* in the form of trading concessions, such as a bigger allocation of sugar in the American market, and on this point they had an interview with the Minister in charge of Economic Affairs in the American Embassy in London.

2. The proposals that eventually emerged from these discussions are as follows :—

- (i) the Chagos Archipelago should be detached from Mauritius and placed under British sovereignty by Order in Council;
- (ii) in the event of independence a defence agreement should be negotiated between Britain and Mauritius and there should be an understanding between the two Governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- (iii) the compensation totalling up to £3 million should be paid to the Mauritius Government to be devoted to agreed development projects over and above direct compensation to land owners and the cost of resettlement of others affected in the Chagos Archipelago;
- (iv) the British Government would also use their good offices with the U.S. Government in support of the request of Mauritius for concessions over sugar imports and the supply of wheat and other commodities;
- (v) the British Government would do their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work in the Chagos Archipelago;
- (vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;
  - (a) navigational and meteorological facilities;
  - (b) fishing rights;
  - (c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers;

APPENDIX M—*continued*

- (vii) if the need for the facilities in the Chagos Archipelago disappeared, sovereignty would be returned to Mauritius;
- (viii) the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Mauritius Government.

3. The Secretary of State has said that as regards point (ii) he is arranging for consultations to take place with the Mauritius Government with a view to working out the agreed projects to which the £3 m. compensation will be devoted (Ministers present at the discussions in London will recall that the possibility of land settlement schemes was raised). As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the U.S. Government and will keep the Mauritius Government fully informed of progress in the matter. The Chagos Archipelago will remain under British sovereignty and the British Government have taken careful notes of points (vii) and (viii).

4. The Secretary of State has now asked for early confirmation that the Mauritius Government is willing to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated in paragraph 2 above.

T. D. VICKERS



(65)45

Copy No. 23

## Council of Ministers

Minutes of Proceedings of the 45th Meeting held on Friday the 5th November 1965.

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance (Dr. the Honourable Sir See-woosagar Ramgoolam, Kt.)

The Chief Secretary (The Honourable T.D. Vickers, C.M.G.)

The Minister of Works and Internal Communications (The Honourable J.G. Forget)

The Minister of Education and Cultural Affairs (The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A. R. Mohamed)

The Minister of Agriculture and Natural Resources (The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications (The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications (The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development (The Honourable S. Bissoondoyal)

The Attorney-General (The Honourable J. König, Q.C.)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Development) in the Ministry of Finance (The Honourable L. R. Devienne)

The Minister of Housing, Lands and Town & Country Planning (The Honourable C. G. Duval)

The Minister of State (Budget) in the Ministry of Finance (The Honourable K. Tirvengadam)

TELEGRAM No. 247 FROM MAURITIUS TO THE SECRETARY OF  
STATE FOR THE COLONIES SENT 5th NOVEMBER 1955

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

- (1) statement in paragraph 6 of your despatch „ H.M.G. have taken careful note of points (vii) and (viii) ” means H.M.G. have in fact agreed to them.
- (2) As regards (vii) undertaking to Legislative Assembly excludes
  - (a) sale or transfer by H.M.G. to third party or
  - (b) any payment or financial obligation by Mauritius as condition of return.
- (3) In (viii) “ on or near ” means within areas within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also understand that if they feel obliged to withdraw from the Government they must let me have (resignations) in writing and consult with me about timing of the publication (which they accepted should not be before Friday 12th November).

3. (Within this) Ministers said they were not opposed in principle to the establishment of facilities and detachment of Chagos but considered compensation inadequate, especially the absence of additional (sugar) quota and negotiations should have been pursued and pressed more strongly. They were also dissatisfied with mere assurances about (v) and (vi). They also raised the points (1), (2) and (3) in paragraph 1 above.

Extract from Minutes of Proceedings of the Meeting of the  
Council of Ministers held on 5th November 1965

UK/US  
Defence  
interest in  
the Indian  
Ocean.

No. 553 Council considered the Governor's Memorandum CM (65) 183 on UK/US Defence Interests in the Indian Ocean.\*

Council decided that the Secretary of State should be informed of their agreement that the British Government should take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated on the understanding that the British Government has agreed to points (vii) and (viii) that as regards point (vii) there would be no question of sale or transfer to a third party nor of any payment or financial obligation on the part of Mauritius as a condition of return and that „on or near” in point (viii) meant within the area within which Mauritius would be able to derive benefit but for the change of sovereignty.

The Attorney General, the Minister of State (Development) and the Minister of Housing said that, while they were agreeable to detachment of the Chagos Archipelago, they must reconsider their position as members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate, in particular the absence of any additional sugar quota, and the assurance given by the Secretary of State in regard to points (v) and (vi) unsatisfactory.

\*reproduced as Appendix 'M'

Extract from Minutes of Proceedings of the Meeting of the  
Council of Ministers held on 12th November 1965

C. M. (65) 46

COPY No. 23

## COUNCIL OF MINISTERS

Minutes of Proceedings of the 46th Meeting held on Friday the 12th November 1965

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance

(Dr the Honourable Sir Seewoosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T. D. Vickers, C.M.G.)

The Minister of Works and Internal Communications)

(The Honourable J. G. Forget)

The Minister of Education and Cultural Affairs

(The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A.R. Mohamed)

The Minister of Agriculture and Natural Resources

(The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications

(The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications

(The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development

(The Honourable S. Bissoondoyal)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Budget) in the Ministry of Finance

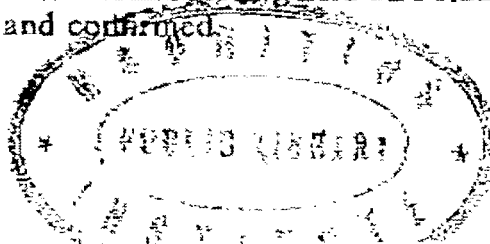
(The Honourable K. Tirvengadam)

Council met at 10.20 a.m.

The Governor announced that the previous afternoon he had received from the Honourable J. König, M.L.A., the Honourable L.R. Devienne, M.L.A., and the Honourable C.G. Duval, M.L.A., their letters of resignations as appointed members of the Council of Ministers. These resignations took immediate effect, i.e. from Thursday the 11th November 1965.

Confirmation  
of  
Minutes

The Minutes of the 45th Meeting held on Friday the 5th November 1965 were corrected and confirmed.



TELEGRAM No. 313 TO MAURITIUS FROM SECRETARY OF  
STATE FOR THE COLONIES SENT 19th NOVEMBER 1965

Your telegram No. 254.

U.K./U.S. defence interests.

There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions oversugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

(Passed to Ministry of Defence for transmission to Mauritius).

No. 1138

18th February 1971

In connection with the proposed construction of an austere naval communications facility on Diego Garcia under the terms of a bilateral agreement between the United Kingdom and the United States of America, I should be grateful if consideration could be given to the possibilities of employing Mauritian labour.

As you know, Mauritius is faced with a severe unemployment problem, and the Mauritius Government is exploring all the possibilities of relieving the situation. Favourable consideration of request made will undoubtedly help the Mauritius Government while, at the same time providing the British and the U.S. Governments with readily available labour.

S. RAMGOOLAM

*Prime Minister*

His Excellency Mr P. Carter  
British High Commissioner,  
Port Louis.

BRITISH HIGH COMMISSION

Chaussée, Port Louis, Mauritius

22 March 1971

32/1

Dr the Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.  
Government House  
Port Louis.

Dear Prime Minister,

1. You will remember that in my letter of 18 February replying to yours of the said date, I said that I would consult my Government regarding your enquiry about the possibility of employing Mauritian labour on Diego Garcia.

2. I have now heard from my Government. They have asked me to say that they are, of course, well aware of the undertaking that they gave on this subject to the Mauritius Government in 1965, namely that they would do their best to persuade the American Government to use labour from Mauritius for works of construction on the Islands. They are also well aware of the provisions of sub-paragraph (7)(a) of the Anglo-American exchange of notes of 1966 (Cmnd 3231) on the British Indian Ocean Territory. Indeed, Her Majesty's Government did tackle United States Government and urged this proposition on them. However, Her Majesty's Government have now heard from the United States Government that it will not be possible for them to employ any Mauritians on the Diego Garcia facility.

3. I understand that the United States Ambassador in Mauritius is informing your Government of this decision.

Kindest regards,

Yours very sincerely,

PETER A. CARTER

## GOVERNMENT HOUSE MAURITIUS

10th November, 1965

My Dear Minister,

In the light of the decision by the Council of Ministers last Friday and a similar decision by the Government of the Seychelles an Order in Council has been made to introduce new arrangements for the administration of the Chagos Archipelago, Aldabra, Farquhar and Desroches as a new territory to be called the British Indian Ocean Territory. The Secretary of State will be making a statement in Parliament in reply to a Parliamentary Question later today and I intend to issue thereafter the enclosed statement.

The Secretary of State has confirmed that the Chagos Archipelago will remain under British sovereignty but is nevertheless giving further consideration to the points raised in the Council of Ministers on Friday and the U.S. Government has been warned that certain points will be raised with them.

Yours sincerely,

J. S. RENNIE

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*Note* :— The text of the question and reply is reproduced at Appendix 'V'

Embargoed for release until 2000 hours local time Wednesday, 10th November

*Defence facilities in the Indian Ocean*

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th :—

“ With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate.

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

Chief Secretary's Office  
Port Louis  
10th November, 1965



## WRITTEN ANSWERS TO QUESTIONS

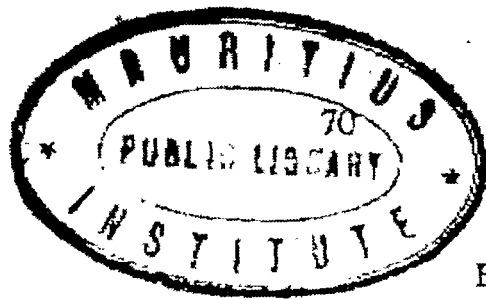
Wednesday, 10th November, 1965

## MAURITIUS AND SEYCHELLES

## Defence Facilities

Mr James Johnson asked the Secretary of State for the Colonies what further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

Mr Greenwood: With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by an Order in Council made on 8th November. The islands are the Chagos Archipelago some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either Government. Appropriate compensation will be paid.



APPENDIX W

British High Commission  
Chaussée, Port Louis, Mauritius  
26th June 1972

32/1

Dr the Rt Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.  
Government House,  
Port Louis.

My dear Prime Minister,

I refer to the meeting in London on 23 February, 1972, between yourself, Sir Harold Walter and Lord Lothian, and to your meeting with Baroness Tweedsmuir on 23 June, 1972, at which the Mauritius Government scheme for the resettlement of the persons displaced from the Chagos Archipelago was discussed.

2. The scheme has been fully appraised in London and I have been authorised to inform you that the British Government are prepared to pay £ 650,000 (the cost of the scheme) to the Mauritius Government provided that the Mauritius Government accept such payment in full and final discharge of my Government's undertaking, given at Lancaster House, London, on 23 September, 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Chagos Archipelago.

3. Accordingly, I should be most grateful if you would confirm that you are willing to accept the payment of £ 650,000 in full and final discharge of my Government's undertaking, and to agree that the British Government may state this in public, should the need arise.

4. When replying, perhaps you would indicate the date and manner in which the Mauritius Government wish payment to be made.

Yours very sincerely,  
R. D. GIDDENS

4th September 1972

With reference to the communication No. 32/1 dated the 26th June, 1972, by the then Acting High Commissioner, I confirm that the Mauritius Government accepts payment of £ 650,000 from the Government of the United Kingdom (being the cost of the scheme for the resettlement of persons displaced from the Chagos Archipelago) in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago. Of course, this does not in any way affect the verbal agreement giving this country all sovereign rights relating to minerals, fishing, prospecting and other arrangements.

In regard to the date and manner of the payment to be made I presume it will be in British pounds sterling made to the Government of Mauritius at the earliest date convenient to your Government.

The Government of Mauritius has no objection to the Government of United Kingdom making a public statement to this effect, should the need arise.

With my warmest regards,  
S. RAMGOOLAM  
*Prime Minister*

Extract from the Political Declaration of Non-Aligned  
Movement's New Delhi Summit Meeting 1983

IX-MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO,  
INCLUDING DIEGO GARCIA

81. The Heads of State or Government expressed, in particular, their full support for Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in contravention of United Nations General Assembly resolutions 1514(XV) and 2066(XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

## Debates No. 27 of 14th December 1965

*Chagos Archipelago — Detachment from Mauritius*

(B/245) Mr C. G. Duval (Curepipe) asked the Premier and Minister of Finance whether he will give an opportunity to the House to discuss the detachment of the Chagos Archipelago from Mauritius, and its inclusion in the British Indian Ocean Territory, especially in view of the stand taken by India and other Afro-Asian countries.

*Mr Forget on behalf of the Premier and Minister of Finance :—*

No, Sir, since I understand from the public statement made by the Leader of the Opposition on November 12th that there is no disagreement between the Opposition and the Government on the principle of the detachment and use for defence facilities of the Chagos Archipelago.

*Mr Duval:* Sir, in view of the reply of the hon. Minister replacing the Premier, and in view of the fact that there have been contradictory statements made by members of the Government at different moments about the conditions attached to the excision of the base, will the Minister say whether, at least, the correspondence exchanged between Her Majesty's Government and this Government will be released to the public?

*Mr Speaker :* This does not arise from the question.

SPECIAL REPORT OF THE PUBLIC ACCOUNTS COMMITTEE  
FOR THE 1980 SESSION

Financial and other aspects of the "Sale" of Chagos Islands and the  
Re-settlement of the displaced Ilois

Introduction

Your Committee investigated into the Revenue received by Government in 1975 for the "SALE" of the Chagos Archipelago and in 1972, for the re-settlement of the displaced Ilois and also into all the disbursements effected in relation to this matter. In the course of our inquiry we came across some disturbing facts which we have felt should be brought to notice.

£ 3 m cash compensation from U.K. in 1965

Your Committee was informed that financial compensation for the "SALE" of Diego Garcia was effected in two stages. The sum of £ 3 m was paid by the British Government in financial year 1965/66 and was credited to Capital Revenue, item L IV/4 — "Sale of Chagos Islands", as per the Accountant General's Financial Report for the financial year 1965/66. This item did not appear in the Estimates of 1965/66. Your Committee enquired whether the word "sale" had caused any problem at the time but was unfortunately unable to obtain any information on this matter. It has also not been possible to get any information on the basis on which the sum of £ 3 m was arrived at in the discussions with the British Government in 1965.

In an answer to a Parliamentary Question (PQ B/754 of 1979) the Prime Minister informed the House that the compensation of £ 3 m was meant for the implementation of development projects in Mauritius. The money was therefore credited to Capital Revenue and was not earmarked for any specific project.

Your Committee was also not able to ascertain whether any cash compensation was effected to the company exploiting the copra plantations in the Chagos at the time. We learned from the representative of the Prime Minister's Office that it was a Seychellois Company, namely Moulinié & Co.

£ 650,000 from U.K. in 1972 for Resettlement Scheme

The second payment of £ 650,000 by the British Government was effected on 28th October, 1972 and credited to Capital Revenue, item L I/8 — "Financial Assistance for Resettlement Scheme" in the Financial Report of 1972/73. This item had not appeared in the Estimates for the year 1972/73. This figure was arrived at after discussions had taken place between the British and Mauritian Governments, on a special scheme "devised to build housing estates and establish pig-rearing co-operatives on land to be provided by the Government of Mauritius", (Forward to the Prosser Report submitted to Government in 1976) for the resettlement of persons displaced from Diego Garcia. Land at Roche Bois and at Pointe aux Sables was duly acquired for this purpose.

## APPENDIX Z--continued

No details on how and when this initial scheme was worked out, were provided to your Committee.

In the Foreword to the Prosser Report the Prime Minister's Office states the following:

" Not long after, it became clear that the displaced persons concerned were not happy with the proposed scheme. An official survey confirmed that the majority was in favour of the simple expediency of sharing the financial assistance received from Britain among the workers, irrespective of their need for proper housing and for a planned means of future livelihood ".

Your Committee has not obtained any information on the survey mentioned above although there was an official request for the details of how and when the displaced persons showed dissatisfaction with that initial scheme.

#### The Prosser Report

For 5 years after funds had been made available by the U.K. Government for the resettlement of the displaced Ilois, the Government of Mauritius was unable to arrive at a satisfactory decision on the manner in which the funds should be utilised. In 1976, the Prime Minister discussed the problems affecting the displaced Ilois with the British Government and it was decided that Mr A.R.G. Prosser, C.M.G., M.B.E., Adviser on Social Development in the Ministry of Overseas Development, would visit Mauritius in order to advise on an appropriate solution to the problem.

The major recommendations made by Mr Prosser were the following:

(a) The immediate setting up of a Resettlement Committee with a first-class administrative officer attached to it on a full time basis. The Government did implement this recommendation. Its composition was in fact reinforced by the inclusion of the Secretary to the Cabinet as its Chairman. It was unfortunate however, that the Committee was not provided with an administrative officer on a full time basis. The Principal Assistant Secretary of the Ministry for Rodrigues was assigned this duty on a part time basis. Your Committee appreciates the fact that his normal duties as P.A.S. in his own Ministry must not have left him much time to deal with the Ilois problem.

(b) Another important recommendation was an occupational training scheme for the unemployed. Mr Prosser even made the interesting suggestion that functional training could be combined with the building of houses necessary for the Resettlement Scheme. This scheme will be described later.

Mr. Prosser recommended that the sum of Rs 750,000 should be set aside for this purpose, immediately.

It is very unfortunate that Government never considered this interesting recommendation.

(c) Welfare services. Mr. Prosser suggested that the Resettlement Committee should allocate Rs 60,000.— to the Social Welfare Commissioner so that the present Social Worker could be funded for a period of 3 years. We were informed that a primary school teacher was seconded for duty to the Social Welfare Division to work with the Ilois on a full time basis. But we obtained no information on the length of time for which she was thus employed.

APPENDIX Z—*continued*

- (d) The housing scheme proposed by Mr Prosser was in fact the most important recommendation in his report. As Mr Prosser rightly pointed out "the most intractable problem for the Ilois, has been housing". (Prosser Report — para. 4). He worked out that after deducting the sum of Rs 750,000 for training purposes and Rs 60,000 for the service of the Social Worker, the sum of Rs 18,500 would be available for each individual household of the 426 families. He suggested a scheme whereby each household in need of a house could be provided with a 15,000 rupee house which would be of „ sound construction but.....slightly outside the high quality of building regulations which govern housing in Mauritius ". (Prosser Report, para. 22) the remaining Rs 3,500 would be distributed to each household for basic furnishing purposes. In the Foreword to the Prosser Report, the Prime Minister's Office did not accept this recommendation to provide the Ilois with sub-standard houses. The Government went very far, by undertaking to allocate the necessary additional funds in order that the houses constructed for the Ilois are not below standards acceptable in the country. In a general way, the Government felt that the Prosser recommendations as amended were in the long term interest of the Ilois community.

Your Committee was informed by representatives of the Prime Minister's Office that Mr Prosser's recommendations for a housing scheme had been rejected by the representatives of the Ilois on the Resettlement Committee and that the latter had opted for cash compensation.

However, your Committee was seriously concerned by some of the facts that came to light in the survey carried out in January 1977 in specific relation to the housing issue. It is true that representatives of the Ilois did formally request that the money available be distributed in cash to the Ilois, at a meeting of the Resettlement Committee held on 4th December 1976. However, the survey carried out in January 1977 revealed that of the 557 families who had registered, 341 had opted for a house and 213 for cash compensation, 3 had not expressed any option. Of the 38 families in Agalega, 6 had opted for a house in Mauritius and 32 for cash payment with the possibility of continued employment there. It should also be well noted that representatives of the Ilois did enquire, at a meeting of the Committee held on 19th February 1977, whether there was any possibility of satisfying both options. According to the minutes of proceedings of that meeting, the Resettlement Committee felt that this proposal would not be feasible. However, the Chairman added that the views of the Committee would be submitted to the Government and a decision would be taken at a later stage. In spite of the fact that a majority of households, over 60% opted for housing, one year later, in December 1977, Government decided to effect cash compensation to all Ilois, irrespective of their date of arrival.

Your Committee wanted to know in very concrete terms, the way in which the proposal for a housing scheme was presented to the Ilois. We wanted to know whether Government had worked out in detail the type of houses to be built, the length of time it would take to construct them etc., and whether such information had been made available to the representatives of the Ilois. Your Committee was unfortunately, not provided with this information.

APPENDIX Z—*continued*

What your Committee found even more surprising was the fact that after it had been discovered in January 1977 that a majority had opted for housing and that the representatives of the Ilois had in February 1977, requested that both options, namely housing and cash compensation, be considered, the Prime Minister, in December 1977, stated the following in a reply to a Parliamentary Question (B/746 of 1977):

“ The Government has finally given up hope to convince the families from Diego Garcia that it is in their best interests to have houses built for them rather than to have a cash compensation only. So steps are being taken to share the grant as well as the interest accrued thereon to the families ”.

## Surveys of the Ilois

It has not been easy to establish the exact number of persons that were transferred from the Chagos Archipelago. In reply to a Parliamentary Question in the House of Commons in November 1965, in relation to defence facilities in the Indian Ocean, the Secretary of State referring to the Chagos Archipelago and Aldabra, Farquhar and Desroches islands said the following:

“ Their population are approximately 1000, 100, 172 and 112 respectively ”.  
(See Annex I)

On 14 December 1965, in the Legislative Council, Mr Forget, on behalf of the Premier and Minister of Finance informed the House that:

“ The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations ”. (See Annex I).

In Mauritius, two main surveys were carried out to establish the total number of Ilois families. The first survey was carried out by the Public Assistance Officers who collected relevant information from the displaced Ilois everytime a group landed in Mauritius. The survey revealed that 426 families had been transferred from the Chagos since 1965. This figure of 426 families was considered to be the correct one by Mr Prosser.

In 1976, when the possibility of the distribution of cash compensation to all Ilois, irrespective of their date of arrival, came up, the Resettlement Committee, set up in 1976, upon a recommendation made by Mr Prosser, decided that a registration of all Ilois settled in Mauritius should be carried out. This second major survey was carried out, in January 1977, by the Public Assistance Division of the Ministry of Social Security under the aegis of the Resettlement Committee. In this case, press and radio/TV communiques were issued asking all displaced persons to register themselves. The figure arrived at in this second survey was 557 families.

Of these 557 families—

- 378 persons were under 5 years of age
- 543 persons were between 5-12 years of age
- 334 persons were between 12-18 years of age
- 1068 were adults
- 102 were above 60 years of age.

Over 150 persons had arrived before 1965. (See Annexures II & III)

The survey also indicated that there were 38 Ilois families in Agalega.



## APPENDIX Z—continued

Although the Ilois were provided with facilities for their registration, a number of persons were left out for various reasons. The representatives of the Prime Minister's Office informed your Committee that there have been a certain number of complaints from those who claim not to have received any compensation; the Permanent Secretary of the Prime Minister's Office has even received letters from some Ilois in Rodrigues, Australia and South Africa. It should be noted that there was, in fact, no facilities provided for registration of the Ilois in Rodrigues, Agalega and St. Brandon, when the 1977 survey was carried out.

Government has now decided to proceed with a new survey of all those who had failed to register in 1977. Your Committee recommends that this facility should be extended to those Ilois residing in the Seychelles as well.

## The Ilois in Agalega

Your Committee was informed that in the Resettlement Committee, a suggestion was made to the effect that a possibility existed for the families in Agalega to be given shares in the Agalega Corporation to the value of their allocation instead of being paid in cash. Your Committee was not provided with any information on the manner in which cash compensation was actually effected in Agalega.

## Cash compensation

When Government finally decided to go ahead with cash compensation, payment was effected in March 1978 on the basis of the survey carried out in January 1977. The following payments were then made:

				<i>Rs</i>	<i>Total</i>
351 children under 5	...	...	...	1,000	351,000
459 children between 5 and 11	...	...	...	1,200	550,800
474 children between 11 and 18	...	...	...	1,500	711,000
1081 adults	...	...	...	7,590	8,204,790
109 old age pensioners (additional)	...	...	...	250	27,250
71 females with children (additional)	...	...	...	250	17,750
			TOTAL	...	9,862,590
Amount available (including interest)	...	...	...	...	11,167,604
Amount paid	...	...	...	...	9,862,580
			BALANCE	...	1,305,014

## APPENDIX Z—continued

## Disbursements as from 1972

Various disbursements were effected as from 1972 when funds were made available by the British Government. The total amount disbursed from 1972 to 1977 was Rs 155,773.33 (Annex IV). Apart from the cash compensation of Rs 9,858,827 effected in 1977/78, there was a further disbursement of Rs 18,605 in 1978/79. Your Committee has, however, not been able to obtain any details on the nature of all the disbursements effected, apart from the cash compensation of Rs 9,858,827 effected in 1978. It should also be noted that interest was, of course, not credited on the disbursements. Interest on the account was paid at 6% per annum between 28th October 1972 and 31st December 1977 although the Bank Rate had risen to 7% from March 1977 to January 1978, and to 9% from January 1978 to October 1979 and has been 10½% since then.

Your Committee fails to understand why interest was not credited to the Fund after December 1977. If accounts had been properly kept, a higher sum would have accumulated in the form of interest.

## Further financial assistance from U.K. Government

At a meeting of the Resettlement Committee held on 19th February 1977, a representative of the Ilois wanted to know whether there was any possibility of obtaining further assistance from the British Government. The Committee according to the Minutes of Proceeding of that Meeting "agreed that there was little, if any, likelihood of such assistance forthcoming".

However, representatives of the Prime Minister's Office informed your Committee that it had always been the wish of the Mauritian Government that such further assistance should be provided by the U.K. Government. Your Committee has however, not been informed whether such request has been made formally and officially by the Government since March 1978.

In a reply to a Parliamentary Question in June 1980, (B/766 of 1980) the Prime Minister informed the House that:

"Regarding the additional compensation to be paid to the Ilois, the British Government has already offered a supplementary amount of £ 1.25 million for their resettlement but is unable to pursue the matter because of a court action in the United Kingdom. The matter being *sub-judice*, we have to wait for the outcome".

Your Committee is aware of the fact that the Prime Minister is referring to the court action entered by certain members of the Ilois community presenting legal claims to the U.K. Government. They are being represented by Mr. B. Sheridan who during his visit in Mauritius in November 1979 tried to make the Ilois sign a document (a deed of acceptance and power of attorney) the terms and conditions of which are reproduced in Annexure V.

In reply to a Parliamentary Question in November 1979 (P.Q. B/1033 of 1979) the Prime Minister informed the House that Government had spent Rs 2,015 on Mr Sheridan during his visit in Mauritius. This would imply that he was in Mauritius in an official capacity, to a certain extent.

APPENDIX Z—*continued*

## General Comments

1. Your Committee feels that this whole problem of displaced persons which arose since 1965 did not receive the serious attention it deserved on the part of government until 1976 when Mr Prosser visited Mauritius. The first serious survey to establish the exact number of persons involved was carried out as late as in January 1977.

2. The compensation of £650,000 was linked to a specific scheme when it was made available in 1972. The money was distributed 5 years later when conditions of life had become very difficult due to rapid inflation during that corresponding period. Mr Prosser himself made a very pertinent remark in that respect in specific relation to the housing scheme:

“ Unfortunately, from the time of the signing of the agreement between the Mauritius Government and the British Government the cost of housing in Mauritius has risen approximately 500% ”. (Prosser Report. Para 19)

Mr Prosser made that remark in 1976 and the money was distributed in March 1978.

3. Throughout his Report, Mr Prosser placed emphasis on the necessity to find an urgent solution to the problem, because of the terrible conditions in which he found the Ilois when he visited Mauritius. In para 24 of the Report he says:

“ The fact is that the Ilois are living in deplorable conditions which could be immediately alleviated if action is taken on the lines I have suggested ”.

Cash compensation was effected almost two years after Mr Prosser had written his Report.

4. Your Committee feels that it is very unfortunate that Government promised that additional funds would be made available in the Resettlement Scheme being proposed by Mr Prosser but no such additional financial assistance has been forthcoming.

5. There is a serious lack of information on the nature of disbursements that were effected since the grant became available in 1972. The Ilois do not seem to be at all aware of the details of these disbursements.

Your Committee was also not at all satisfied with the approximate way in which interest on the account was worked out. In our opinion total interest accrued on the account, should have been much higher.

6. The survey carried out in January 1977 was not comprehensive enough. A number of Ilois were left out for some reason or another.

7. Your Committee feels that the Ilois were not presented with a housing scheme worked out in concrete terms nor were the advantages of such a scheme over straight cash payment sufficiently stressed. It is normal that for persons, who have been living in deplorable conditions for such a long time cash compensation represented immediate relief. But as it was rightly pointed out by the Prime Minister's Office in the Foreword to the Prosser Report, the recommendations in the Report, especially the housing scheme would have been „ in the long term interest of the people concerned ”.

8. Finally, Your Committee is concerned that it has not been confirmed whether Government has so far made any *formal* and *official* request for further financial assistance despite the fact that the majority of the Ilois are still living in deplorable conditions.

V. NABABSING,

*Chairwoman.*

3rd October, 1980.

## EXTRACT FROM DEBATES NO. 27 OF 14 DECEMBER 1965

DIEGO GARCIA — SALE OR HIRE (No. A/33) Mr J. R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the *sale or hire* of the Island of *Diego Garcia* to either the United Kingdom Government or to the Government of the United States of America or to both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr Forget on behalf of the Premier and Minister of Finance :—

I would refer the Honourable Member to the following communiqué issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

## (COMMUNIQUE)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME  
WEDNESDAY 10TH NOVEMBER

## Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate. "

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C. D. and W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependents, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

## SURVEY OF ILOIS

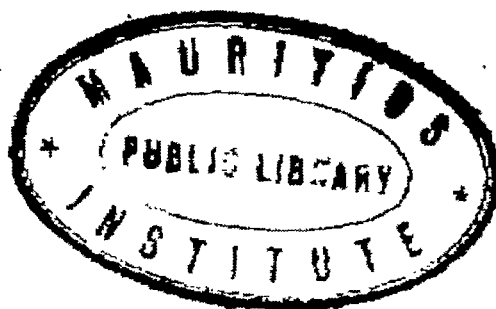
## Year of Arrival

<i>Locality</i>	<i>No. of families</i>	<i>30's</i>	<i>40's</i>	<i>50's</i>	<i>60's</i>	<i>70's</i>	<i>Unknown</i>
1. Baie du Tombeau ...	5	—	—	4	1	—	—
2. Bois Marchand ...	2	—	—	—	2	—	—
3. Besu Bassin ...	9	—	4	3	1	1	—
4. Cassis ...	94	—	1	17	61	14	1
5. Cité La Cure ...	22	—	1	3	7	10	1
6. Docker's Flat ...	40	—	—	6	11	23	—
7. Grand River North West ...	5	—	—	2	3	—	—
8. Le Hochet ...	5	—	—	—	4	1	—
9. Les Salines ...	51	—	1	6	35	8	1
10. Pointe aux Sables ...	31	—	2	11	14	1	3
11. Pailles ...	16	—	2	—	10	4	—
12. Port Louis ...	4	—	—	—	2	2	—
13. Petite Rivière ...	26	—	—	9	12	3	2
14. Roche Bois ...	225	3	7	28	139	35	13
15. Ste. Croix ...	10	—	—	2	7	1	—
16. Other areas ...	12	—	1	—	10	1	—
<b>TOTAL</b> ...	<b>557</b>	<b>3</b>	<b>19</b>	<b>91</b>	<b>319</b>	<b>104</b>	<b>21</b>

## SURVEY OF ILOIS

## Population according to Age-Group

<i>Locality</i>	<i>No. of families</i>	<i>Under 5</i>	<i>5-12</i>	<i>12-18</i>	<i>Adults</i>	<i>Over 60</i>
1. Baie du Tombeau ...	5	3	7	3	7	—
2. Bois Marchand ...	2	—	1	—	5	—
3. Beau Bassin ...	9	3	6	15	22	3
4. Cassis ...	94	67	82	49	181	17
5. Cité La Cure ...	22	24	27	14	64	3
6. Docker's Flat ...	40	31	48	30	107	4
7. Grand River North West ...	5	1	2	5	10	—
8. Le Hochet ...	5	1	6	8	10	—
9. Les Salines ...	51	43	44	19	94	10
10. Pointe aux Sables ...	31	24	38	22	72	7
11. Pailles ...	16	14	8	8	22	3
12. Port Louis ...	4	3	8	1	8	2
13. Petite Rivière ...	26	14	22	28	55	5
14. Roche Bois ...	225	130	210	117	370	45
15. Ste. Croix ...	10	11	16	6	13	1
16. Other Areas ...	12	9	18	9	28	1
<b>TOTAL</b> ...	<b>557</b>	<b>378</b>	<b>543</b>	<b>334</b>	<b>1068</b>	<b>102</b>



## ANNEX IV

					Rs
Amount received on 28.10.72	...	...	...	...	8,666,666.67
Disbursed in 1972-73	...	...	...	...	83.33
<hr/>					
Balance on 30.6.73	...	...	...	...	8,666,583.00
Disbursed in 1973-74	...	...	...	...	112,402.00
<hr/>					
Balance on 30.6.74	...	...	...	...	8,554,181.00
Disbursed in 1974-75	...	...	...	...	15,175.00
<hr/>					
Balance on 30.6.75	...	...	...	...	8,539,006.00
<hr/>					
Balance on 30.6.76	...	...	...	...	8,539,006.00
Disbursed in 1976-77	...	...	...	...	24,103.00
<hr/>					
Balance on 30.6.77	...	...	...	...	8,514,903.00
Disbursed July 77 to December 77	...	...	...	...	4,010.00
<hr/>					
Balance on 31.12.77	...	...	...	...	8,510,893.00

					Rs
<i>Interest at 6% per annum</i>					
28.10.72 to 30.6.73 (246 days)	—	$246 \times 6 \times \text{Rs } 8,666,583$	=		350,462
<hr/>					
		365 100			
1.7.73 to 30.6.74	=	$6 \times \text{Rs } 8,554,181$	=		513,250
<hr/>					
		100			
1.7.74 to 30.6.75	=	$6 \times \text{Rs } 8,539,006$	=		512,340
<hr/>					
		100			
1.7.75 to 30.6.76	=	do "	=		512,340
1.7.76 to 30.6.77	=	$6 \times \text{Rs } 8,514,903$	=		510,894
<hr/>					
		100			
1.7.77 to 31.12.77	=	$184 \times 6 \times \text{Rs } 8,510,893$	=		257,425
<hr/>					
		365 100			

TOTAL ... 2,656,711

Amount received ... 8,510,893 (after disbursement)  
Interest to 31.12.77 ... 2,656,711

11,167,604

31st December, 1977

M. NALLETAMBY  
*Accountant-General*

## DEED OF ACCEPTANCE AND POWER OF ATTORNEY

This is the Deed of me (1).....  
 .....and the adult members of  
 my family who have hereunto subscribed their names and seals.

I am an Ilois who left that part of British Indian Ocean Territory known  
 as (2).....in the ship (3).....  
 .....on the.....day of.....19.....  
 never to return. My family who came with me then are (4).....

.....and the following children:—

<i>Adult children's names</i>	<i>Addresses</i>	<i>Dates of Birth</i>
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<i>Infant children's names</i>	<i>Addresses</i>	<i>Dates of Birth</i>
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We know that the United Kingdom Government has already paid the Mauritian Government £650,000 for the resettlement of the Ilois people who came to Mauritius following the setting up of British Indian Ocean Territory and has offered to make available a further £ 1,250,000 for the purpose provided it is accepted by the Ilois in full and final settlement of all claims whatsoever upon the United Kingdom Government by the Ilois arising out of the following events:—the creation of British Indian Ocean Territory, the closing of the plantations there, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their prohibition from ever returning to the Islands composing British Indian Ocean Territory (the events) and of all such claims arising out of any incidents or circumstances occurring in the course of the events or out of the consequences of the events, whether past, present or to come (" their incidents circumstances and consequences ").

So that this money may be paid to help the Ilois.



ANNEX V—*continued*

1. We appoint Bernard Sheridan of 14 Red Lion Square, London WC 1 as our Attorney in accordance with S. 10 of the Powers of Attorney Act 1971 and in particular we authorize him to receive the £ 1,250,000 on behalf on the Ilois in such instalments and amounts and subject to such conditions as he in his absolute discretion and without need to make further reference to us, may agree with the United Kingdom Government.
2. We appoint him as our solicitor to act on our behalf in relation to all matters connected with the payment of the £ 1,250,000 and I, (5)..... authorize him to act on behalf of my infant children named above as their next friend.
3. We accept the money already paid to the Mauritian Government and the money to be paid to Mr Sheridan as aforesaid in such instalments as he shall agree in full and final settlement and discharge of all our claims however arising upon the United Kingdom Government (both upon the Crown in right of the United Kingdom and the Crown in right of British Indian Ocean Territory) and upon its servants, agents and contractors in respect of the events, their incidents, circumstances and consequences and we further abandon all our claims and rights (if any) of whatsoever nature to British Indian Ocean Territory.
4. We understand accept and agree that by entering into this Deed we shall not be able to sue the United Kingdom Government in respect of the events, their incidents, circumstances and consequences and hereby covenant not to do so.
5. We agree that all questions concerning the validity and construction of this Deed and any disputes arising upon it shall be governed by English law and justifiable only in English Courts.

- 
- (1) Insert name and address of head of family
  - (2) Insert name of Island
  - (3) Insert name of ship and date of leaving BIOT
  - (4) Insert name and address of wife
  - (5) Insert name of head of family

### L'île Maurice base de la Réserve Stratégique Britannique

Au cours d'une interview qui a été diffusée, hier soir, dans le programme "London Calling Mauritius", M. David Windsor, de l'Institut des Etudes Stratégiques de Grande Bretagne a parlé de la possibilité pour Maurice de servir de base à une brigade de la Réserve Stratégique du Royaume-Uni.

Les récents troubles en Est-Afrique, au Bornéo, à Aden ont mis en relief l'impérieuse nécessité pour le Gouvernement britannique d'avoir des troupes disponible dans un rayon qui ne soit pas trop éloigné des foyers de troubles afin qu'elles puissent se porter le plus rapidement possible au secours des Gouvernements de ces territoires si ces derniers font appel à leur aide.

Il est difficile pour ces troupes de se rendre avec la rapidité voulue de la Grande Bretagne au Bornéo, par exemple. Si des bases peuvent être créées dans des régions assez rapprochées des centres possibles de troubles, la situation serait grandement améliorée.

Maurice est bien placé dans ce sens, située comme elle l'est, à un angle d'un triangle, dont les deux autres angles sont Aden et Singapour. Une brigade de la Réserve Stratégique, stationnée à Maurice, pourrait se rendre rapidement dans un pays membre de la Fédération de Grande Malaisie, à Aden ou dans les territoires est-africains. De plus, notre dépendance, Diego Garcia, possède un port naturel immense qui pourrait abriter des unités de la Marine Royale.

M. Windsor a dit que les autorités britanniques étudient attentivement cette possibilité. Le stationnement d'une brigade de la Réserve Stratégique à Maurice, de même que l'utilisation de la rade de Diego Garcia comme base pour la marine britannique, donnerait de l'emploi à un grand nombre de Mauriciens et aiderait à résoudre, du moins en partie, notre problème de chômage.

The Economist—July 4, 1964

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So the search has properly been on for a well-situated, sparsely populated, politically unexplosive haven in the Indian Ocean. Eyes, logarithms and compasses have been turned to Mauritius and to the Seychelles; the pointers suggest that there is a good deal to be said for one of the island dependencies of Mauritius, one at least of which does have a natural harbour and was used during the second world war. Mauritius is politically calm: its party leaders have agreed to form an all-party government and to discuss internal self-government some time after October, 1965.

But even under these moderately propitious stars, is it up to Britain alone once again to set about the job of looking for a reasonably secure base east of Suez? There has been endless argument about what an Indian Ocean base is for: a stepping stone to south-east Asia; a mounting post for peace-keeping operations like the useful east African ones in January; a guard against Arab take-over bids like the Iraq-Kuwait incident in 1961; a warning eye on British oil interests. The point is not so much which of these functions survive scrutiny—the first and second look the sounder ones—but that Sir Alec Douglas Home, Mr Wilson and Mr McNamara all agree that collectively they justify a military effort.

### L'île Maurice et la nécessité d'une base dans l'Océan Indien

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Les alliés occidentaux sont à la recherche d'une base, d'un marchepied entre l'Europe et l'Australie et l'Extrême Orient.

Cette nécessité a donné lieu à un marchandage dans les coulisses, entre Washington et Whitehall au sujet de l'établissement d'une base importante, sur une île de l'Océan Indien.

Le choix semble devoir se porter sur l'île Maurice, située à 500 milles à l'est de Madagascar.

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Une des propositions britanniques serait à l'effet que les USA aident à établir une base importante dans l'Océan Indien dont le double but de servir de poste de relais aux Britanniques et de ravitailler une flotte américaine de porte-avions.

Les Américains, de leur côté, ont laissé entendre qu'un engagement américain dans l'Océan Indien pourrait être conditionnel à l'appui que la Grande Bretagne donnerait au plan américain pour une force nucléaire mixte au service de Nato.

L'île Maurice, ou l'une de ses dépendances est le choix le plus plausible —non seulement pour des raisons logiques et stratégiques: ce pays jouit d'une certaine stabilité politique. Il a une population de 550,000, faite en grande partie d'Indiens introduits par les Français et les Anglais, et qui a atteint un stade d'harmonie politique et multiraciale tel que l'indépendance pourrait lui être accordée demain n'étaient le manque de devises étrangères et un lourd problème de chômage. En fait, c'est exactement le genre de pays qui bénéficierait de l'argent et de l'emploi additionnels qu'une base militaire importante y déverserait.

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## (APPENDIX 'A 4')

London. (00.55) August 30. New American bases being sought on British islands in the Indian Ocean were "purely and simply to provide radio-communication link," official sources said here tonight.

"But," the sources added, "they could, of course, be extremely useful as forward staging points for troops."

High-level discussions are now taking place between the United States and British Governments to consider the usefulness of various islands which might be used. A British survey ship is in the Indian Ocean and experts are studying the possibilities.

The sources said they were looking for a small island on which to set up a small American relay station. This would provide better communications between United States forces in the.....

"If we find one big enough and if we could lay down a runway without spending millions on it, we could have a first-class base for troops," an authoritative source said.

## (APPENDIX 'A 5')

London (08.33) Aug. 31 The Daily Telegraph stated here today that co-operation between Britain and America over the use of remote but, by modern requirements, strategically based islands as defence posts of various kinds, was long overdue.

This Conservative daily said it would be 'short-sighted' to limit the co-operation to the Mauritius dependency of Diego Garcia—"the use of which by the American Navy as a Polaris communications centre is under discussion between the two countries."

The Telegraph continued: "There are several reasons why America now needs these posts in parts of the world, such as the Indian Ocean, where at present she has none.

"Her Polaris fleet is expanding fast. She wants to be better equipped for getting forces and military aid very quickly to possible trouble spots.

"One contingency might be a renewed Chinese attack on India. Others might arise from increasing Russian and Chinese activities in Africa.

"Britain has the islands strewn about. America has the forces and the money. Britain is over extended and cannot take full responsibility for new commitments just because the only possible bases happen to be British islands. The case for co-operation in some form is overwhelming."

The Telegraph stated that no doubt a howl of indignation against "Anglo-American imperialism" would arise from the Communist countries at "any such precautionary measures."

It added: "This will be joined by most of the Afro-Asian countries, although perhaps with less conviction by those who are aware of Communist activities and their own need for disinterested help in a crisis.

"In fact the islands in question are inhospitable, with populations of a couple of hundred people, who would certainly welcome and benefit from an American presence."



**The Economist****A Vacuum to fill**

.....

The east African operations of last January, which saved the governments of Kenya, Tanganyika and Uganda from their mutinying armies, were models of what can be done. It does not take much imagination to think of three or four places in this rickety reach of the globe where the same call for help may be heard again. This may give offence, but is it not possible in Ceylon, or Persia, or somewhere in the Persian Gulf, or somewhere on the east coast of Africa again?

This is presumably the thought that lies behind the present Anglo-American search for a communications centre (and maybe something more) in the Seychelles or one of the Mauritius dependencies. The difficulty lies in winning Afro-Asian acceptance of the British share in this operation.

The Indian Ocean is the only large part of the world where the United States does not already bear the main burden of looking after western interests. It cannot be expected to bear the whole extra weight of trying to preserve stability between Nairobi and Singapore too; and British knowledge of the area, and the present deployment of British forces, make it common sense for Britain to help out. But Britain's surviving colonial entanglements—particularly the Aden entanglements in the north-west—still cause suspicion. This is why it is essential to explain as clearly as possible the distinction between the colonial period, which is now very near its inevitable end, and the quite different aims Britain and America hope to pursue together in the vastly changed conditions of the post-colonial period.

.....

### **Des Mauriciens à Londres protestent**

There are persistent reports in the London press that joint consultations are at present being held between the British and American Governments for the setting up of certain bases in the Indian Ocean. Allegedly the Government of Mauritius is being consulted on the question. We are being told that these bases will be used for a communications system, but the implication is so serious that Mrs Bandaranaike of Ceylon has felt it necessary to issue a statement expressing concern about the matter and the Indian Government has deftly proposed a nuclear-free zone in the Indian Ocean.

I feel sure that the Governments of India and Ceylon would not have been unduly worried if the discussions were merely for the installation of innocuous communication centres. I draw the conclusion, and voice the apprehension of hundreds of Mauricians in London, that the Anglo-American discussions are a conspiracy to find surreptitious ways for inaugurating a cluster of military bases on our soil and on other islands in the Indian Ocean with all the cold war concomitants that these entail.

The danger inherent in the presence of military bases in any part of the world cannot be ignored and there are too many glaring examples for us to be apathetic to the situation. The attitude of our leaders has not yet been made public but I have a strong suspicion that somehow the British Government will attempt to link this question of bases with the granting of Independence.

Let us make it clear to our elected representatives that we are not going to allow Mauritius to become a pawn on the Chessboard of the Big Powers. The presence of military bases on our soil will endanger our national security, for in the event of any war there is not one single military installation that will be immune from retaliatory measures. If it is true, as has been openly suggested in the London press, that in reality these bases will be used mainly for operations in Malaysia and South East Asia, then we shall find ourselves involved in an unholy alliance which tends to exacerbate an already tense situation fraught with unprecedented danger.

There will undoubtedly be sophisticated arguments in favour of allowing these bases to operate, on the grounds that they would bring employment and foreign capital to help us out of our present economic plight. These arguments would banish morality from the field of politics and must be rejected as despicable pragmatic logic in the most repulsive form of Machiavellism.

We are not prepared to pawn our lives for the benefit of a few crumbs of bread.



APPENDIX 'A 7'—*continued*

If our leaders consider that the affairs of our country can only be administered by leasing our land for doubtful military enterprises then they ought to say so to the people and in no uncertain terms. I trust our people will not be easily duped.

We do not wish to become a partner in the gigantic conflict between East and West. What we require from all the nations of the world is to be allowed to pursue our destiny in peace and friendship. Our internal problems are exacting enough and we will have to pool all the energy we can muster to bring about their solution.

I call upon all responsible citizens and particularly the intellectuals, writers, journalists and artists who have a special responsibility, being the guiding light of our nation, to do everything in their power to awaken and arouse the national consciousness to this dangerous threat.

Tell our political leaders that if it is their intention to mortgage our national security for questionable economic advantages, then we shall not rest at all until the danger is removed.

The Economist—January 16, 1965

Strategies West and East

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Here the Indian Ocean has been a relative gap, and it happens that Britain still possesses in it and in the south Atlantic various islands which might be made into useful staging-posts. A joint Anglo-American survey has been made of a possible chain of such posts on Ascension Island, Aldabra or another island in the Seychelles, Diego Garcia in the Chagos Archipelago, and an island in the Cocos group, the administration of which was prudently transferred some years ago from Singapore to Australia. This scheme would give British and American forces convenient access to Singapore and Australia, either by way of Aden or across, or round, southern Africa, by a route relatively immune to political hazards. There are, however, one or two possible political hazards to be surmounted first. The islands are insignificant bits of sand or coral and barely inhabited; still Aldabra is administered from the Seychelles and Diego Garcia from Mauritius, and each would need to be detached by, presumably, an Order in Council and administered from London, to make the investment of putting runways and other installations on them seem a reasonable bet.

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## (APPENDIX 'A 9')

London. 23.55 April 5. (1965) The Government was asked in the House of Commons today what approaches had been made to the Government of MAURITIUS regarding certain facilities for an Anglo-United States base in the Indian Ocean.

Mrs Eirene White, Colonial Under-Secretary, replied that the Premier of MAURITIUS (Dr S. Ramgoolam) was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin.

She added: "In November, the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before an announcement was made in London or in Washington."

MAURITIUS, an island in the Indian Ocean, was ceded to Britain by France in 1814.

**THE WASHINGTON POST**

Sunday, May 9, 1965

**ENGLAND, U.S. PLAN BASES IN INDIAN OCEAN***by Robert Eastbrook**Washington Post Foreign Service*

London, May 8. Plans for developing a series of joint Anglo-American military facilities on largely uninhabited islands in the Indian Ocean have received preliminary approval by Britain's Labor Government.

The initial outlay for acquiring necessary real estate in remote island dependencies of the British Colonies of Mauritius and the Seychelles has been estimated at \$28 million.

This would include the cost of buying out and moving the few indigenous inhabitants.

Discussions have been under way for a year about a chain of communications and staging sites, relatively invulnerable to anticolonial agitation, to assist peacekeeping operations in South and Southeast Asia as well as Africa if necessary.

In January the United States relayed a list of six to eight recommended locations based upon a survey made by an American team aboard a British ship last summer.

**Navy Seeks Site**

First on the priority list is Diego Garcia, a Mauritius dependency in the Chagos Archipelago 1000 miles south-west of Ceylon. Funds are already assured for a Navy communications relay station on Diego Garcia. The American request, however, is that the entire Chagos Archipelago be acquired.

Before plans can be carried further, Britain must approach local authorities in Mauritius and the Seychelles in order to transfer administrative responsibility to London for the Chagos and other faraway dependencies.

Some urgency attaches to this step because constitutional talks looking to possible early independence for Mauritius are scheduled for this fall, and it will be necessary to complete the transfer beforehand.

APPENDIX 'A 10'—*continued*

Any fears that the British Labour Government might not be enthusiastic about the Indian Ocean scheme have been delayed by the enthusiasm with which new ministers have taken up the idea. It dovetails with the "East of Suez" defence concept of Prime Minister Wilson.

Foreign Secretary Michael Stewart, Defence Secretary Denis Healey and Navy Minister Christopher Mayhew are particularly impressed with the possibilities. The government is under heavy pressure, however, to economise on military expenditures.

No precise arrangement has been made for sharing the initial cost, but Britain reportedly expects the United States to bear the larger portion. How much Britain can devote to development of the actual military facilities will be determined in part by a broad defence review now under way.

**Inadequate Water**

Such development may be relatively expensive in some instances because some of the islands lack adequate water or are surrounded by coral. But whatever the eventual American share, many diplomats as well as military men consider the cost well warranted because the opportunity to obtain such secure sites may never recur.

In addition to the Chagos Archipelago, other sites under consideration include the Aldabra islands, a dependency of the Seychelles 300 miles north-west of Madagascar, where Britain wants an air field; the Farquhar Islands, also a Seychelles dependency 150 miles north-east of Madagascar; the Agalega Islands, a Mauritius dependency 500 miles north-east of Madagascar, and the Australian-owned Cocos Islands 500 miles south of Sumatra.

American officials emphasize that the Indian ocean facilities would be primarily logistical and would not be intended as full-scale bases with garrisons. They could nevertheless be used for servicing or staging conventional air, sea and ground forces.

In response to a recent question in Parliament, Wilson denied that any submarine bases are contemplated in the area. Even though the Indian Ocean facilities would not be large, however, their presence would be potential reassurance to governments that might be intimidated by Chinese nuclear weapons.

APPENDIX 'A 10'—*continued*

Although no one likes to talk about abandonment of the big British base at Aden, some planners are thinking about an alternative. The official position is that the question of the future of the Aden base will be negotiated when the Federation of South Arabia becomes independent in 1968.

Present thinking is that either Britain or the United States would assume individual responsibility for the operation of each particular site, but that all such facilities would be available for use by both countries.

### No Formal Request

No formal request for transfer of the dependancies has yet been made to the governments of Mauritius or the Seychelles, although officials were advised of the military survey.

Similarly the Australian government has not yet been approached for facilities in the Cocos Islands, but no difficulty is anticipated in view of the extensive Australian cooperation with Britain and the United States.

In the case of Mauritius the situation becomes delicate because of internal political disagreement over whether the 720 square mile territory with a population of 700,000 should opt for full independence or some lesser status in the Commonwealth.

Transfer of the dependancies could become a bone of contention, although some Mauritians believe that the military facilities would benefit the area.

Actually the far-removed dependancies are attached to Mauritius only for convenience of administration. The total population of all such lesser dependancies is under 2000.

With the Seychelles there is less of a problem because the 45,000 people are not so far advanced towards independence. This colony (where Archbishop Makarios of Cyprus spent a period in exile during the mid-1950s) lacks air connections.

Officials here suggest that agreement to build an airport as an aid to communications and tourism might ease the transfer of the dependancies.

APPENDIX 'A 10'—*continued*

The idea of American planners has been wherever possible to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere. British or American nationals would then be brought in to staff the facilities.

In the case of Diego Garcia it would be necessary to purchase one foreign-owned coconut plantation. Transfer of the 664 residents of the Cocos Islands is not contemplated, however. Cocos already has a civil airport that is a stop on the route between South Africa and Australia.

Perhaps because of cost, British authorities have regarded the transfer of population as less important. Although they acknowledge that military facilities on the Indian Ocean islands might stimulate new "colonialism" propaganda charges, they believe that it probably would be possible to operate them with the local production remaining.

### **Les U.S.A. proposent Rs 135 m pour militariser les dépendances de Maurice et des Seychelles**

Les Etats Unis sont fin prêts pour l'installation de bases militaires dans les dépendances de l'île Maurice et les Seychelles. Des fonds ont déjà été votés pour une station de relais télégraphiques destinée à la marine. La station serait située à Diego Garcia. Des experts sont arrivés à une estimation précise: Rs 135 millions, pour le coût initial de l'acquisition des terres nécessaires et le déplacement (avec dédommagement) des habitants de ces terres. Ils sont au nombre de 2000.

Toutefois, les Etats Unis ne peuvent aller de l'avant. Il faut d'abord obtenir des gouvernements mauricien et seychellois le transfert du contrôle administratif des territoires convoités au gouvernement de Londres. Dans les milieux américains on pousse à la roue pour que le transfert ait lieu avant la conférence constitutionnelle de septembre prochain.

#### **Londres d'accord**

Le gouvernement travailliste britannique a donné son accord préliminaire au projet de création d'une chaîne d'installations militaires anglo-américaines dans des îles de l'Océan Indien. C'est Robert H. Estabrook du Washington Post Foreign Service qui l'a affirmé récemment.

Il déclare par ailleurs que le nouveau gouvernement a accepté cette idée avec enthousiasme et que Michael Stewart (Affaires Etrangères), Denis Healey (Défence) et Christopher Mayhew (Marine) ont été impressionnés par les perspectives du plan. Il précise que le gouvernement britannique, sous la pression de difficultés économiques, voudrait économiser sur le budget militaire et s'attend à ce que les U.S.A. financent en grande partie le projet.

#### **Un chapelet de stations**

1. La première priorité militaire est Diégo Garcia, dépendance mauricienne de l'archipel des Chagos à 1,000 milles au sud-ouest de Ceylan. Mais les conseillers U.S. voudraient que l'archipel entier soit acquis. Les autres possibilités sont: 2. les îles Aldabra, dépendances des Seychelles, à 300 milles au nord-ouest de Madagascar, où la Grande Bretagne voudrait créer un aéroport. 3. les îles Farquhar, dépendances des Seychelles, à 150 milles au nord-est de Madagascar. 4. les îles Agaléga (Maurice) à 500 milles au nord-est de Madagascar et 5. les îles Cocos, possession australienne à 500 milles au sud de Sumatra.



APPENDIX 'A 11'—*continued***La menace chinoise**

Robert Eastabrook rapporte que les bases ne seraient pas dotées de garnisons mais serviraient au transit et au déploiement des forces de l'air, de mer et de terre. Même des installations de deuxième ordre seraient une garantie tangible de protection pour les pays qui pourraient être intimidés par la force nucléaire chinoise.

**Aden abandonné en 1968**

Personne ne parle ouvertement de l'abandon de la grosse base britannique à Aden mais certains conseillers en stratégie pensent à une alternative. Ce n'est qu'en 1968, lorsque la fédération de l'Arabie du Sud deviendra indépendante, que l'Angleterre négociera l'avenir de la base d'Aden.

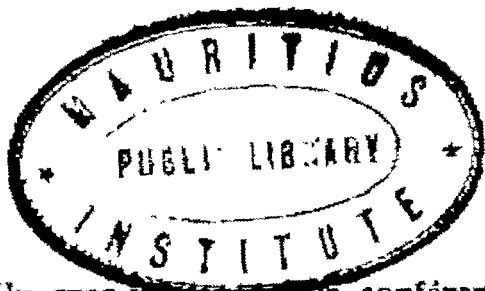
**La tactique américaine**

A en juger par ce que rapporte ce correspondant américain, la tactique américaine consiste à minimiser la nature des liens entre Maurice et ses dépendances. Ainsi, il est allégué que ces îles dépeuplées ne représentent rien. Les U.S.A. ont évidemment intérêt à sous-estimer la valeur de nos dépendances.

La procédure préconisée par les "cerveaux" américains est d'acheter les droits des habitants d'îles choisies pour leur valeur militaire et les transférer ailleurs pour faire du repeuplement anglo-saxon.

**Une base en deux temps**

Par ailleurs, de source britannique, on croit savoir que M. Robert Mc Namara, Secrétaire d'Etat américain à la défense, est tombé d'accord pour commencer la construction des installations à Diégo. Celle-ci, d'abord une station de communications américaine, pourrait devenir éventuellement une base d'arrière-garde anglo-américaine, si la base d'Aden est perdue.



Un gros morceau à la conférence du Commonwealth: le dilemme des bases.

Wilson décidera-t-il sans Ramgoolam?

La question de l'installation de bases dans l'Océan Indien (à Diego Garcia notamment) sera soulevée à la conférence des Premiers ministres du Commonwealth qui se réunit actuellement.

L'installation d'une base militaire dans une de nos dépendances touche de près notre pays. Or, Sir Seewoosagur Ramgoolam, Premier, n'assiste pas à la conférence des Premiers ministres du Commonwealth. L'île Maurice, colonie, n'a pas été invitée par le gouvernement britannique.

Toutefois, nous pensons que Sir Seewoosagur ou un délégué averti de notre gouvernement comme M. Maurice Paturau devrait, pour une fois, être à Londres afin de pouvoir discuter à l'échelon individuel de cette importante question avec les représentants des gouvernements du Commonwealth qui participent à la conférence.

Notre correspondant particulier à Londres rapporte dans une dépêche en date du 17 juin, date de l'ouverture de la conférence des Premiers Ministres du Commonwealth:

"La Grande Bretagne discutera avec ses partenaires du Commonwealth de la possibilité de l'installation de bases militaires dans les îles de l'Océan Indien".

Il poursuit et dit que la presse britannique de dimanche dernier a fait mention de consultations que M. Harold Wilson, Premier Ministre britannique, a eues ce jour-là avec ses *senior ministers* à Chequers, pour préparer la voie.

"For straight talking later this week to Prime Ministers Conference on Britain defence dilemma".

La Grande Bretagne demandera à l'Australie et à la Nouvelle-Zélande de l'aider dans sa tâche de défendre le monde libre. Ces deux pays ont intérêt à la défense de l'Extrême Orient et de l'Asie en raison de la menace nucléaire chinoise.

Les points suivants seront soulevés avec les membres qui participeront à la conférence du Commonwealth et qui ont été mis en avant par M. Denis Healey, ministre de la Défense de Grande Bretagne.

(1) La défense du Sud Est asiatique et de l'Inde peut être assurée par une force mobile dépendant d'avions de transport ou par une chaîne de bases militaires dans l'Océan Indien. Les bases sont-elles moins chères et meilleures?

APPENDIX 'A 12'—*continued*

(ii) Un avion de transport coûte £ 60 millions et un investissement de £ 25 millions est nécessaire tous les 5 ans, pour lui permettre d'être opérationnel.

(iii) Pour les bases militaires dans les îles, les avions F 111 seraient choisis.

(iv) Le nombre de soldats nécessaires pour maintenir une base.

Notre correspondant particulier précise qu'une des inquiétudes exprimées par la presse britannique est la suivante:

"Can Island bases in Indian Ocean cover the oil rich Sheikdoms of the Persian Gulf and enable Britain to close the costly and politically difficult base at Aden?"

Il faut toutefois préciser ici que la question militaire sera traitée "as a side line issue" avec les ministres du Commonwealth.

Le progrès des territoires britanniques vers l'indépendance et leur admission dans le Commonwealth est un des sujets qui sera discuté au cours de la 14<sup>e</sup> réunion des chefs de gouvernements du Commonwealth, qui a commencé à Londres avant-hier (jeudi 17 juin 1965).

Cette question ainsi que certaines autres sont inscrites sur l'agenda. Elles furent toutes acceptées par les représentants des 21 pays membres, après qu'ils aient été reçus par le Premier ministre britannique, M. Harold Wilson.

Les autres sujets à l'ordre du jour consistent en une revue de la situation politique et économique dans le monde et la création du secretariat du Commonwealth. La question de l'immigration sera aussi soulevée.

## BASE BRITANNIQUE DANS L'ARCHIPEL DES CHAGOS

### La Grande Bretagne veut retrancher les Chagos de l'administration de Maurice

#### Opposition de Sir Seewoosagur Ramgoolam qui propose une location La défense à l'Est d'Aden

Pour ceux qui ont suivi de près l'évolution de la situation politique et militaire en Arabie du Sud, la déclaration faite à Londres par le Secrétaire d'État aux colonies, M. Anthony Greenwood, annonçant que l'Arabie du Sud doit être indépendante avant la fin de 1966, n'a pas été une surprise.

La presse britannique avait fait état de l'évolution de cette situation. Un journal britannique, l'*ECONOMIST*, avait même conclu que, pour pouvoir contenir la Chine en profondeur à l'Est d'Aden, la métropole pourrait être amenée à porter son choix sur "une île de l'Océan Indien".

Nous sommes en mesure d'annoncer, aujourd'hui, que ce projet britannique a pris corps.

Le gouvernement de Maurice a été mis en présence, tout récemment, d'une proposition formelle de Londres à ce sujet.

Cette proposition est la suivante :

La métropole offre de faire acquisition de l'Archipel des Chagos pour y établir des bases aériennes. Nos dépendances deviendraient ainsi une zone d'atterrissage.

Une condition importante est attachée à cette proposition : l'île Maurice accepterait que l'Archipel des Chagos soit retranché de sa dépendance.

Londres a offert de déplacer à ses frais les habitants de ces îles—trois cents ou quatre cents familles—pour les replacer, en les dédommageant, à Agaléga.

Le gouvernement britannique n'a encore présenté aucun prix ferme de dédommagement au gouvernement mauricien. On en ignore le montant exact.

APPENDIX 'A 13'—*continued***Ramgoolam: pas de retranchement**

A ces propositions, Sir Seewoosagur Ramgoolam a objecté que l'archipel des Chagos soit retranché de la dépendance de Maurice. Le Premier, leader du Parti Travailleurs, veut plutôt d'un bail, condition qui, à ses yeux, viendrait grossir les revenus de Maurice.

A cette objection de Sir Seewoosagur, Londres opposerait, croyons-nous savoir, une objection de taille pleine d'enseignement: non retranché de la dépendance de Maurice, l'archipel des Chagos, devenu base aérienne britannique, continuerait à dépendre des aléas d'un gouvernement mauricien.

La métropole pourrait donc être bientôt placée devant une alternative fort embarrassante pour elle: (a) ou bien imposer sa décision en la déguisant, comme il convient en pareille circonstance, d'une procédure *ad hoc*; (b) ou bien céder à l'objection de Sir Seewoosagur et réviser toute la question.

Sir Seewoosagur se trouve, de ce fait, dans une situation clé. Il est peu probable qu'il puisse abandonner ainsi des dépendances mauriciennes et ses objections, il faut l'en féliciter, sont, cette fois, celles d'un esprit avisé dont la circonspection est pleine de sagesse. Aucun Mauricien ne pourrait lui donner tort en la conjoncture.

## ANNEX 91

Kevin Shillington, *Jugnauth: Prime Minister of Mauritius*, (Hong Kong: Macmillan 1991)  
(extract)



Sir Anerood Jugnauth, MLA, QC, KCMG, Prime Minister of Mauritius.

# Jugnauth

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Prime Minister of Mauritius

Kevin Shillington

M

MACMILLAN

1991



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## Politics and the Member for Rivière du Rempart, 1963 – 67

During the 1950s and early 1960s Mauritius progressed steadily towards democratic internal self-government, in preparation, in due course, for full political independence. The political advances of this period, however, must be seen against a background of social and economic problems which were rapidly reaching crisis proportions.

At the root of the crisis lay a rapidly rising level of population alongside a steep fall in levels of employment. The former stemmed from a continuing high birth-rate after the dramatic fall in mortality caused by the virtual eradication of malaria in 1945. The population of Mauritius, which grew from 370,000 in 1900 to 420,000 in 1944, an annual average growth of 0.3 per cent, had reached 600,000 by 1960 and had developed a growth rate of more than 3 per cent.

The parallel rise in unemployment, aggravated by population growth, was underpinned by an over-dependence upon a sugar industry which could never offer jobs to more than a third of the working population. The dominance of sugar cultivation, combined with a weak manufacturing sector, meant that Mauritians depended for the vast majority of their food, clothing and manufactured goods upon expensive importations. And with falling real wages for most of the 1950s, even those in work were finding it increasingly hard to make ends meet. A medical survey revealed that a high proportion of manual workers, urban as well as rural, suffered from anaemia and inadequate diet leading to giddiness and headaches. Whoever inherited the mantle of colonial neglect faced the thankless task of satisfying the heightened expectations of a desperate population.

The 1950s saw Mauritius move into regular party politics as the

franchise was opened in 1959 to universal adult suffrage. The only political party to win seats in the general election of 1948 had been the Labour Party which won four. The rest were independents. The old Franco-Mauritian élite, who had seen only one of their candidates elected, were reassured for the moment by the Governor's packing them into the Council as his own appointees. But realising they could not rely on the Governor's support indefinitely, a group of Franco-Mauritian professionals, led by lawyer Jules Koenig and with financial backing from the sugar magnates, formed a loose-knit political grouping called *Ralliement Mauricien*, in preparation for the next election. But if they thought that was enough to outmanoeuvre Labour, they were soon disappointed. The fusing of Rozemont's Creole base with Ramgoolam's Hindu intellectuals had greatly strengthened Labour's position in the Council as well as in the country, and at the general election of 1953 Labour won 13 out of 19 contested Council seats.

Constitutional talks in London and in Mauritius extended through 1956 and 1957, culminating in the Constitution of 1958 which established 40 single-member constituencies and extended the franchise to all adults over the age of 21. A clutch of new parties were formed to fight the next election, scheduled for March 1959, and Labour faced their first real challenge.

Following Rozemont's death in 1956 the Labour Party had elected a Creole intellectual, Guy Forget, as president of the party, despite the fact that Ramgoolam was clearly the party leader within the Government Council. It was felt, perhaps, that a Creole party president would help retain Labour's traditional Creole working-class support. But Forget lacked the common touch, the Labour Party appeared increasingly to be the preserve of Hindu and Creole intellectuals and Creole working-class support began to wane.

*Ralliement Mauricien* hoped to pick up on Labour's falling Creole support and formed itself into a regular party under the name of *Parti Mauricien Social Démocrate* (PMSD) in an attempt to broaden its appeal to the popular Creole vote. The challenging task of uniting white capitalist business class with popular Creole vote, however, required something more than its leader Jules Koenig could provide, and the kind of populist leader who could pull it off did not arrive on the political scene until after the election. As it was, in the election of 1959 many Creole working class simply did not bother to vote.

In order to ensure that the Muslim minority did not miss out again,

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a nominated member of the new Vacoas/Phoenix municipal council and he found himself one of the few Hindu members of the largely Creole council which, as a result of the 1964 election, had come under PMSD control. Jugnauth witnessed the PMSD ruthlessly wielding that control, ousting many Hindus from their council jobs.

The anti-Hindu propaganda of the PMSD became increasingly evident during the course of 1964 and into 1965. Leadership of the PMSD had by this time been assumed in all but name by Gaëtan Duval. He knew that the Mauritian constitution was due for review in 1965 and his heightened anti-Hindu and anti-independence propaganda appeared to be partly aimed at convincing the British Government that, left to its own devices, Mauritius would fall apart in inter-communal conflict. A continued British presence, on the other hand, would protect the interests of white big business from Hindu nationalisation and protect the jobs, Christian religion and cultural values of the general Creole population.

As inter-communal tension spread in the early months of 1965, the All Mauritius Hindu Congress took up the defence of the Hindu community against the attacks of anti-Hindu propaganda. In villages throughout the country Congress held public meetings to rival those of the PMSD. It was the build-up to a bitter conflict that was to lead to open battles in the canefields in May, the death of several Congress youths in the rural south and the declaration of a State of Emergency from May to August 1965, enforced by British troops flown in from Aden.

Jugnauth saw all the hopes he had expressed in his maiden speech in the Assembly falling apart around him and he was driven to anger. In replying to the speech from the Throne on 30 March 1965, before the conflict had turned to open violence, Jugnauth had welcomed the Government's declared intention to legislate against racial incitement, but pointed out that propaganda from certain sections of the Mauritian community against other communities had been going on for years. In fact, he declared, 'certain political parties', (the PMSD), had derived their very strength from anti-Hindu propaganda. And yet, in all that time, nothing had been done to stop it. On the contrary, it had been allowed and even been encouraged. But now, and this was the hypocrisy that really angered Jugnauth, '[now] . . . when we find there is a reaction in some quarters, [the Hindu Congress], then they think that there must be some sort of legislation to stop that reaction.'

'I am one of those who sincerely do not believe in racial hatred

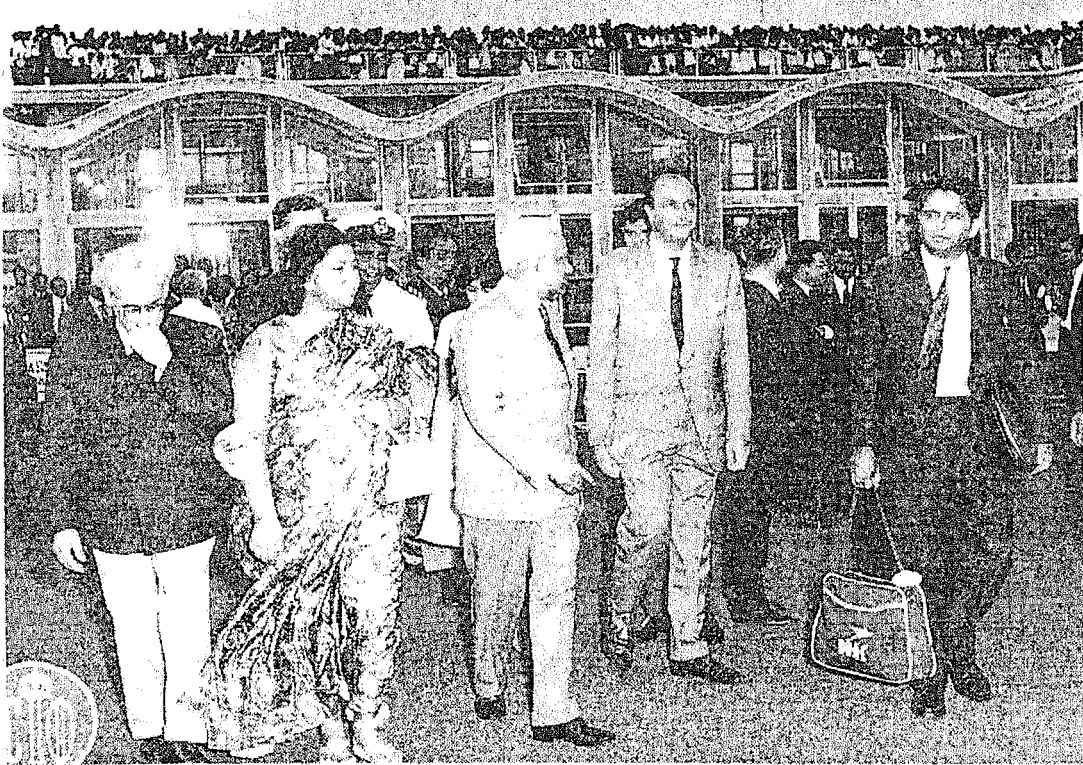
and communalism,' he told the House. 'But', he warned 'I am also one of those who, if forced to have recourse to communalism, will not hesitate for one instant to do so.'

It was in the aftermath of this speech that Jugnauth joined the All Mauritius Hindu Congress. He saw their political platform as an opportunity firstly to counteract the malicious allegations of the PMSD and sensitise the Hindu electorate about what Duval and the PMSD were really up to, and secondly, to mobilise the grassroots in favour of independence. The PMSD had been organising huge demonstrations against independence for months and even years, but so far there had been no counter-demonstrations in favour of independence. Ramgoolam and Labour had been too busy discussing constitutional issues at ministerial level, while Bissoondoyal and the IFB were focusing their energies on criticising Labour in the Assembly.

Jugnauth never saw his membership of Congress at odds with his membership of IFB. He did not see Congress as a real political party in the sense of contesting elections. So far as Jugnauth was concerned, Congress was an extra-parliamentary pressure group, a useful single-issue platform, and when he felt that Hindus had been mobilised to defend their rights and dignity and the road to independence was secured, he withdrew from the Hindu Congress. Before then, however, there was the final Constitutional Conference to attend in London.

All the Mauritian parliamentary parties were represented at the Conference which sat in London under the chairmanship of the British Colonial Secretary from 7 to 24 September 1965. Ramgoolam, as Premier, led the thirteen-strong Labour delegation. Koenig headed the five-man PMSD delegation which included Duval. Jugnauth travelled as part of Bissoondoyal's IFB team of five, while A.R. Mohammed led a CAM party of three. Even the independents were represented, by Maurice Paterau and Jean Ah Chuen.

In the light of the recent conflict and State of Emergency in Mauritius, what the British Government hoped to achieve from the Conference was a consensus in favour of independence. While Ramgoolam and the Labour group, expecting to form the next government, were firmly in favour of independence, Bissoondoyal was ambivalent. He distrusted Ramgoolam and what he considered his 'élitist' Government. As a result, Jugnauth had to spend much of the evening before the closing session of the Conference persuading Bissoondoyal that the IFB must give its full support to



The constitutional delegates depart for London, September 1965. On the right, IFB delegate Anerood Jugnauth. In the centre, Premier Ramgoolam turns to speak to Acting Deputy-Governor, R.V. Rostowski.

Ramgoolam in his call for independence. Otherwise, Jugnauth pointed out to his party chief, the British Secretary of State, seeing them divided, might postpone the granting of independence until a clearer consensus was achieved. This would strengthen the hand of the right-wing PMSD and lead to further communal conflict and exploitation of the masses. Once independence was achieved, argued Jugnauth, Mauritians would be masters of their own destiny, there would be other elections, and if Ramgoolam's Government did not satisfy the electorate, they could be replaced.

On the final day of Conference it was thus left to Jugnauth to put the IFB's case, and in a very vigorous speech he gave his party's unqualified support for Ramgoolam's formal call for independence. The submissions of Ramgoolam and Jugnauth were the only two speeches made that day in favour of independence. Together, however, the speeches were of sufficient power to create the right impression on the attendant British officials. And Mohammed, anxious to safeguard Muslim interests, was persuaded to join the consensus. In the end it was only the PMSD that stood out against independence. Koenig had called instead for some form of close



IFB delegates Sookdeo Bissoondoyal and Anerood Jugnauth in Trafalgar Square, London, September 1965.

'association' with Britain as the only way to safeguard minority rights and provide continued access for Mauritian sugar to British markets in the event of Britain joining the European Economic Community. This, the PMSD thought, would also provide an outlet for emigration to Britain in the event of 'Hindu domination'.

The British Government, however, decided to overrule the PMSD's expressed fears and concluded that independence would be granted just as soon as a request came from a simple majority vote of those returned to the Legislative Assembly after the next general election. It was July the following year before agreement was finally reached in Mauritius on a suitable electoral system which satisfied all demands for minority safeguards. The size of the Assembly was increased to 70. The 40 single-member constituencies were paired into 20 larger constituencies, each represented by three elected members, and a single two-member constituency was added for the island of Rodrigues. The remaining eight seats would be allocated on the basis of a 'best-loser' system, designed to offer seats to parties and communities which an electoral commission decided were under-represented in the Assembly.

An important side-issue was also decided at the time of the London



Conference – the Diego Garcia affair – or more specifically, the British Government's decision to remove the Chagos Archipelago from Mauritian Government control, before independence. The Chagos Archipelago was a string of tiny islands, most of them uninhabited, far to the north of Mauritius in the central Indian Ocean. Diego Garcia was the principal inhabited island of the group, with an estimated population of little more than 1,000. It was well-known that Britain and the USA were looking for military bases within the Indian Ocean region. Britain was withdrawing from most of her mainland bases east of Suez and the Americans were becoming ever more deeply embroiled in their struggle against the spread of communism in south-east Asia. Potential plans for using the Chagos Archipelago had been openly discussed in the Mauritian press before the constitutional delegates left for London.

The British Government decided it would be wise to get the agreement of the principal Mauritian delegates, while they were in London, before removing the Chagos Archipelago from Mauritian Government control. But it was never brought up openly at Conference. The way it was put privately to Ramgoolam and the leaders of the other parties was that independence for Mauritius was dependent upon their agreement to the excision of the Chagos islands. Minutes of these informal meetings were never recorded and so it is impossible to know now exactly what transpired. In his evidence to a Mauritian Select Committee on the affair in February 1983, Anerood Jugnauth recalled that he and the other IFB delegates who had not been in on the private talks had been led to believe that the British only wanted the islands as part of a communications network. Whatever the likelihood of British or American future use of the islands as a military base, the general view of Mauritian delegates in September 1965 seems to have been that it was a minor issue, peripheral to the more important one of Mauritian independence.

As soon as he returned from London at the end of September 1965, Anerood Jugnauth renewed his vigorous campaign, rousing rural public opinion in favour of independence. Using Hindu Congress meetings, in villages around the country, Jugnauth argued his case with a passionate missionary zeal. He also persuaded leading members of Congress to make common cause with the IFB in a political campaign for independence. By the end of October negotiations with Bissoondoyal were complete. They agreed to merge their two parties on the single issue of independence, and at a large public meeting at Bon Accueil on Sunday 7 November they announced the

formation of an Independence Party. Jugnauth appealed to all those in favour of independence to join them in a common front against the PMSD, while Bissoondoyal, in saying he was willing to work with any party which was for independence, could not resist a side-swipe at Labour ministers for being too interested in money and cocktail parties.

A few days later the agreement to excise the Chagos Archipelago from Mauritius was made public and the PMSD took the opportunity to withdraw its three ministers from the coalition Cabinet on the grounds that the £3 million compensation offered to the Mauritian Government for the excision of the Chagos was too little. In reality, the PMSD realised it was time to respond to the 'Independence Party' challenge. This Duval did when he launched the PMSD's campaign against independence at a huge party rally on 5 December.

As 1965 drew to a close Ramgoolam realised that, with his beloved 'Independence' at stake, he could no longer keep entirely aloof from communal politics. His concept of a multi-party coalition government had collapsed with the resignation of the PMSD ministers in November, so Ramgoolam agreed to bring the Labour Party and the CAM into an 'Independence Alliance' with the IFB and the Hindu Congress. This enabled him to reshuffle his Cabinet and he offered the junior post of Minister of State for Development to Anerood Jugnauth.

With the rural population now politically awakened, the battle lines for independence clearly drawn up, and with himself in Government, Jugnauth now withdrew from the affairs of Hindu Congress and devoted his energies instead to the problems of economic development.

Jugnauth's earlier interventions in the Legislative Assembly made it clear that he had not yet developed any clear idea of how Mauritian industrialisation could be achieved. He accepted the wisdom of the time that 'unemployment is due to overpopulation' and that the only way to solve this in the longer term was through education for family planning. In the meantime he believed that the new Development Bank could do something, however small, to help unemployment by encouraging secondary industry. But it is interesting to note here, in light of later policy, that in a debate on the role of the Development Bank in December 1963, he warned against the dangers of trusting 'foreign capitalists', arguing a preference for local Mauritian capital to develop secondary industries. In this he was in accord with the thinking of Ramgoolam, Bissoondoyal and most of the

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to obtain recognition for the MMM as an alternative party of Government.

One of the first such trips was to London in 1977. As Leader of the Opposition, Jugnauth was invited to some of the formal celebrations of the Queen's Silver Jubilee. At the same time, it was the occasion of the Commonwealth Heads of Government Conference and Jugnauth was invited by Ramgoolam to join the Mauritian delegation. Shortly before the Conference started, news came through that there had been a coup in the Seychelles. Albert René, leader of the radical left-wing Peoples' United Party, had seized power by force, overthrowing the Government of James Mancham, who happened to be in London for the Conference. Mancham had close associations with the PMSD which was still part of Ramgoolam's Alliance Government. Like Duval, Mancham had opposed independence for the Seychelles in the 1960s and in fact was primarily responsible for delaying Seychelles' independence until 1976. René, on the other hand, was a close friend of Bérenger who, in his earlier and less guarded moments had been known to commend the MMM to a seizure of power 'by any means'. It was an embarrassing moment for Jugnauth, made worse by Bérenger's immediate arrival in the Seychelles to congratulate his friend. Photographs appeared in the international press showing René and Bérenger posing for the photographers with armed soldiers in the background.

Jugnauth was unable to say anything in public for fear of embarrassing his colleagues in the MMM, but the coup itself and the spontaneous reaction of Bérenger did little to improve the image of the MMM as a parliamentary opposition. It provided great anti-MMM propaganda for Duval and it further hindered Jugnauth in his heartfelt efforts to turn young activists in the MMM aside from all thoughts of violent revolution. Nevertheless, things quietened down, René's Government increasingly achieved international recognition and fears of the MMM's following his example gradually faded in Mauritius. So much so that few eyebrows were raised in April 1978 when Jugnauth led a delegation of the MMM to the Seychelles to establish formal friendly relations with fellow 'progressive socialists'. It was part of the party's preparation for government, to establish working relationships with allies in the region. Thus in August 1980 Jugnauth, Bérenger and the MMM's vice-president, Kader Bhayat, visited Prime Minister Indira Gandhi in New Delhi where they established an important and cordial relationship with the Indian

Government. They found common ground when they discussed most political issues and in particular on the international ones of alignment and the return of Diego Garcia and the Chagos islands to Mauritius.

In internal political affairs Jugnauth had been pragmatic in accepting his party's narrow defeat in December 1976. Some of his younger, more radical colleagues, however, felt cheated from their rightful position of power, and found it difficult to accept with patience the prospect of five more years of waiting. In retrospect, for the MMM, it was a blessing in disguise that they did not come to power in 1976. For a start, they missed being in power during the worst years of international recession, but, in any case, it would have been very difficult for so many young men in their mid-twenties to have had to take the reins of critical ministries. They were not yet ripe to take decisions. The intervening years, from 1976 to 1982, were important years of maturation, even for those who did not get elected. And this was something that was appreciated by Jugnauth about his colleagues in the MMM. It was a time of learning about the institutions of government and the procedures of the Assembly. Indeed, the very fact of being in official Opposition was a lesson in itself in parliamentary democracy.

Between 1976 and 1982 support for the MMM grew steadily through the country. Everything seemed to militate against the Labour Alliance and it soon became clear that it was simply a matter of time before the MMM came to power. The economic upturn which had saved Ramgoolam's Government at the last election was short-lived. The country began to suffer the effects of world recession in the late 1970s and early 1980s and the Government appeared to have no effective solution to the problem. New investment in the EPZ factories ground almost to a halt and rising unemployment and ever greater demands upon the public purse led Finance Minister Sir Veerasamy Ringadoo to admit in 1979 that the country was 'living beyond its means'. The Government found itself at the mercy of the International Monetary Fund (IMF) and World Bank which insisted upon their own harsh solutions as conditions for further loans. Ringadoo was forced to cut subsidies on basic essentials such as water, rice and flour, reduce public spending and devalue the Rupee twice, by nearly 30 per cent in 1979 and a further 20 per cent in 1981. The net result was soaring inflation and no real halt in the steady rise in unemployment. Even nature seemed determined to play its part, with the worst series of cyclones

that Anerood Jugnauth, the lawyer-turned-politician, painfully asserted the constitution of the country over the constitution of the party. The conflict was a logical consequence of the events and internal party relationships which he had unwittingly allowed to evolve over the previous decade. Even then, he might have accepted the party's unanimous vote had it not been for Bérenger's typically brash and impolitic proposal of new Cabinet names. Bérenger's action reminded Jugnauth of several earlier occasions when the Minister of Finance had presumed to speak for the Prime Minister without prior consultation. Bérenger's attitude at the meeting revealed, Jugnauth believed, the true purpose of the meeting – Bérenger's desire to usurp complete Prime Ministerial authority – a belief which, in Jugnauth's own mind, was merely confirmed by the phone call from Eden College on the Saturday.

Having allowed himself into that fateful meeting of party parliamentarians, the Prime Minister had laid himself open to the party dictate. It was a lesson which he was not likely to forget. Henceforth Anerood Jugnauth jealously guarded his Prime Ministerial authority, privileges and prerogatives. And so far as his relations with the MMB were concerned, it was simply a matter of time before the facade of co-operation cracked. Whatever the appearance on the surface that basic level of trust which is essential between a Prime Minister and his party had all but been destroyed.

The main crisis temporarily resolved, high farce now ensued. On Thursday 4 November the PSM executive accused two of its ministers, Jocelyn Seenyen (Health) and Kailash Ruhee (Planning and Economic Development), of gross disloyalty to the party during the recent crisis, and demanded their resignation from the Government. They were told they would be expelled from the PSM if they did not resign by Saturday. With his credibility barely restored, the Prime Minister saw all his careful reconstruction falling apart around his ears and he became very angry. On the morning of Saturday 6th he told the press: 'I have not revoked the ministries of Ruhee and Seenyen. I have not bowed before my own party. I will not bow before the PSM.' On Sunday evening he decided to reinforce the message and returned to the MBC for a third broadcast. It was a short one this time. He announced he was not going to sack Ruhee and Seenyen who were good ministers. They could stand as independents. And he appealed to Harish Boodhoo to put the country before the party.

With that, things finally seemed to settle down. Bérenger went

and announced the economic package which included a rise in the price of rice and flour, and the PSM indicated that though the party would not be standing in December's municipal elections, they would support the candidates of the MMM.

The turn-out in the municipal elections was a sorry reflection on six months of 'Sixty-Zero' Government. Voting figures were heavily down on previous elections as the electorate expressed their dissatisfaction with politicians in general and the Labour Party managed to gain a few seats from the MMM.

In December, while the various parties were digesting the results of the municipal elections, the Prime Minister left the country for an official visit to Lusaka and then on to Moscow where he was a guest of the Government of the USSR. He returned at the beginning of January and in February departed again on a state visit to India at the invitation of Mrs Gandhi. This was followed immediately by a state visit to Libya where he had a lengthy meeting with Colonel Gaddafi in his official tent in Tripoli. The purpose of these visits was to consolidate on earlier contacts and specifically to get aid for the beleaguered Mauritian economy. The Soviet Union promised two patrol vessels and an assurance that they would admit Mauritian textiles to the Soviet market, but what Jugnauth could have done with was loans of hard cash. Both the Soviet and Libyan Governments had promised strong economic aid before the MMM came to power. Now they were qualifying this by saying that aid would only be forthcoming if Mauritius changed its whole economic structure to something more akin to 'their type' of socialism. In other words, Mauritius must abandon the private capitalist sector altogether. These were pre-conditions not previously mentioned and ones which Jugnauth's Government would never agree to. The MMM's 'socialist allies' in opposition were no help at all once the MMM was in power.

It was really only from India that Jugnauth received further support and understanding. On a purely psychological level it was important to the Indo-Mauritian community that its Government cultivate cordial relations with 'mother-India', while on the financial level the Indian Government was already helping Mauritius on a number of important projects. More importantly on this occasion, Mrs Gandhi gave India's full support to the Mauritian Government's stand on Diego Garcia and Jugnauth's firm desire to play his part in keeping the Indian Ocean 'an international zone of peace'. India promised to bring its full influence to bear upon the British and

## ANNEX 92

Adele Smith Simmons, *Modern Mauritius: The politics of de-colonisation*, (Bloomington: Indiana University Press 1982) (extract)

# MODERN MAURITIUS,

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The Politics  
of Decolonization

ADELE SMITH SIMMONS

Indiana University Press,  
*Bloomington,*

[1982].



To my parents, who helped me  
understand and value pluralism

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By the time the conference began, each party had clearly defined its position. The challenge for the twenty-eight delegates from Mauritius and the eight representatives from the Colonial Office was to find a suitable compromise. In his opening remarks on September 7, 1965, Secretary of State Anthony Greenwood made it clear that the Colonial Office had not ruled out any solutions in advance. He did not think it right that "the British Government, although it has ultimate constitutional responsibilities, should attempt to lay down in advance constitutional solutions for highly developed communities many thousands of miles away."<sup>57</sup>

In order to find ground for possible agreement, the Colonial Office met privately with each of the parties represented as well as with the two independents, while proindependence pickets surrounded Lancaster House. During these discussions, the electoral system remained an insurmountable problem. The *Parti Mauricien* held to its demand for a party-list system, and the Labour party still refused "to consider either proportional representation or a party-list system." Razack Mohammed remained firmly committed to reserved seats and separate electoral rolls for Muslims, adding that if the conference was prepared to concede the safeguards he was demanding, he in turn was prepared to agree to independence. Both the *Parti Mauricien* and Labour seemed to agree on combining the existing forty single-member constituencies into twenty multimember constituencies, and Ramgoolam suggested a maximum of three members from each constituency.

The question of separate communal rolls remained a major point of dissension. Ramgoolam, caught between his basic disapproval of the system and his need for Muslim support, was willing to take Mohammed up on his offer: Muslim support for independence in return for Labour party support for separate communal rolls. But Greenwood remained opposed, reflecting Colonial Office policy which had been to discourage the development of communal politics. He had grave doubts that once such a system was introduced it could easily be abolished, and agreed with Duval that "it would be difficult to confine communal rolls to only two minority groups."<sup>58</sup>

Anticipating Greenwood's closing remarks, *Parti Mauricien* leaders decided to boycott the final session. The conference hall was therefore half empty when Greenwood pronounced the official view that a referendum would "prolong the current uncertainty and political

controversy in a way which would only harden and deepen communal divisions and rivalries.”<sup>59</sup> On the second point of disagreement, the electoral system, the Colonial Office was unable to decide on an official view. Greenwood therefore proposed that a commission be appointed to recommend a suitable system within the principles which most parties had agreed upon: multimember constituencies, a common electoral roll, the provision for discouraging small parties, an opportunity for fair representation for all sections of Mauritius, and representation from the island of Rodrigues, a dependency of Mauritius and a reliable constituency for the *Parti Mauricien*.

On the third issue, the final status of the island, the secretary of state was straightforward: “It was right that Mauritius should be independent and take her place among the sovereign nations of the world.”<sup>60</sup> Following the report of the electoral commission, a general election would be held and a government formed.

In consultation with this government, Her Majesty’s Government would be prepared to fix a date and take the necessary steps to declare Mauritius independent, after a period of six months full internal self-government, if a resolution for this was passed by a simple majority of the new Assembly.<sup>61</sup>

As some consolation to the minority parties, Greenwood presented a number of safeguards, beginning with a list of fundamental rights and freedoms, in the form of a framework for the constitution. Adopting an earlier suggestion of Bissoondoyal’s, the new constitution would provide for the appointment of an ombudsman who would step in, either on his own initiative or following a complaint, to investigate the official acts of government departments and all public authorities. A public service commission and a police service commission were provided, with the goal of ensuring the impartiality of appointments to the civil service and the police. Finally, the approval of three-quarters of the Legislative Assembly was required to alter any of the entrenched provisions of the constitution—those relating to the sections on fundamental rights, the powers of the legislature, the judicial system, the public service and police commissions, the ombudsman, and the method of constitutional amendment. Amendments dealing with sections other than the entrenched clauses would require approval of only two-thirds of the Assembly.

# 10. A New Nation

1965–1967

IN 1965 MAURITIUS seemed on its way to independence. But ahead lay two turbulent years. Its last two years as a colony were fraught with unexpected tension, fear, and violence. In September 1965 it seemed that all that remained was to hold an election and—assuming the approval of the electorate—proceed to independence, a process that was scheduled to take nine months. But because of political maneuvering, the process was drawn out to twenty-three.

Both the Labour party and the *Parti Mauricien* shared responsibility for the delay: both blamed the Colonial Office. In the twenty-three months between the constitutional conference and the election, political controversy focused upon unemployment, the report of the electoral commission, and the timing of the elections. No party or politician responded to these issues without consciously considering the implications for the coming election campaign. Nothing mattered so much as what voters would do on election day.

The significance of these elections extended beyond Mauritius. The issue was not simply which party and community would govern the island, but whether Mauritius would remain a colony. The British government was giving Mauritius a chance, through these elections, to decide whether to remain a colony or become independent. Such an election was unique in British experience and differed considerably from referenda about continued association held in former French territories, where the French government was explicit about economic sanctions for those who voted no.

In the background of the London negotiations over constitutions and electoral systems was another issue, never actually discussed in

conference but presumably the subject of the two meetings between Prime Minister Harold Wilson and Ramgoolam. This was the question of the island of Diego Garcia. The British administered from Mauritius four archipelagoes—including the sizable but virtually uninhabited island of Diego Garcia—although they were thousands of miles north of Port Louis in the Indian Ocean. With colonies disappearing rapidly, both the United States and Great Britain were anxious to maintain some kind of foothold in the Indian Ocean which would give them access to South Asia as well as Africa. The British talked to the Mauritians about a communications center, a refueling station, and possibly an air strip; the United States was developing more elaborate plans for a defense base.

Speculation about British interests in Diego Garcia was encouraged in the House of Commons on May 27, 1965, when Greenwood confirmed that Britain, “in conjunction with Americans,” was considering “the possibility of establishing certain limited facilities in the Indian Ocean.”<sup>1</sup> Throughout the summer, Mauritian newspapers tried to guess what Greenwood actually meant. Secret negotiations began in London in September. As the constitutional conference ended, Ramgoolam agreed in private to transfer the archipelagoes to Great Britain in return for £3 million, which the British government would pay in installments. In fact, the bill was paid by the United States on the understanding that some of the money would be used to relocate the existing inhabitants of the island—approximately 1,200 people. No Mauritian took notes during the negotiations, and there was no exchange of documents, hence exactly what was said and what was meant during these negotiations is open for debate.

Although the agreement remained a secret until November 10, ~~nearly six weeks after the constitutional conference, it was easy for the *Parti Mauricien* to link the sale of the archipelagoes, and particularly Diego Garcia, to the Colonial Office acceptance of independence.~~<sup>2</sup> The *Parti* charged that the British government, desperate for a defense base, had offered independence in return for a commitment to sell the islands. They criticized Ramgoolam for helping Britain to turn the Indian Ocean into a center for nuclear weapons.—and at the same time criticized the price, feeling that better financial terms could have been made.<sup>3</sup> In the Diego Garcia issue, the *Parti Mauricien* found the scapegoat for the denial of their requested referendum.

Duval and Koenig took full advantage of the crisis. On November 12 the three *Parti Mauricien* ministers resigned from the government, forcing a collapse of the fragile coalition of which the Colonial Office had been so proud. A month later, on December 5, the *Parti Mauricien* organized the largest popular meeting it had ever had. Calling the British “Anglo-Saxon robbers” because the islands in question were worth more than £3 million, the *Parti* wildly accused the Labour party, the British, and the Americans of encouraging another Hiroshima by permitting the installation of a military base on the island.

Diego Garcia was only an excuse for the meeting, which Duval hoped would bring new people into the *Parti Mauricien* to support his ultimate goal, preventing independence under Labour. The demonstration, even larger than the one Duval had organized six months earlier for Greenwood, was another proof of Duval’s popularity.<sup>4</sup> Franco-Mauritians who had never before attended a political meeting wore blue shirts (the symbol of the *Parti Mauricien*) and cheered for Duval and Koenig. Desperate to stop independence, they knew that only Duval could bring opposition voters to the polls. In their heart of hearts, the Franco-Mauritians were probably also pleased with the anti-British tone of the meeting. No one questioned the contradiction between the accusations Duval was making against the British and the fact that the *Parti* alternative to independence was association with Britain—an inconsistency which reflected in part Duval’s own ambivalence. On the one hand, association was the only plausible alternative; on the other, Duval had little admiration for most of the British officials with whom he had been dealing for the past five years.

Confident of the Creole, Chinese, and Franco-Mauritian vote, Duval used the December 5 meeting to announce a major change in *Parti Mauricien* policy. To win a general election, he had to win Hindu votes. In a complete about-face, he gave the *Parti* a new slogan, “Hindoo, mon frère.” Communalism was out, and he promised that any members of his party whom he heard being communal in conversation or action would be properly punished.<sup>5</sup> “Hindoo, mon frère” was a distasteful phrase for the Franco-Mauritians from Curépipe and for the Creole dockers from Port Louis, but they remained committed to Duval as the only alternative to independence and Hindu domination.

Immediately after the meeting, Duval began talking openly with

Indo-Mauritians—Tamils, low-caste Hindus, Muslims—any Indians who would associate themselves with the man who only a few months earlier had been a Creole communalist. The Labour party became increasingly concerned as reports of Indian defections to the *Parti Mauricien* appeared in the press. In June 1966, a group of low-caste Hindus formed the People's Socialist party and allied themselves with the *Parti Mauricien*. At the same time, the first of a number of prominent Muslims resigned from the *Comité d'Action Muselman* and announced his support for the *Parti Mauricien*.

Labour was also under pressure from the Hindu radicals. Near the end of 1962, the Independent Forward Bloc and the All-Mauritian Hindu Congress entered into an alliance and announced plans to contest the coming elections together. Since, in the past, both parties had strongly criticized Labour for not pursuing socialist policies far enough and for excluding lower-caste Hindus, Labour leaders viewed the new alliance with considerable dismay. Afraid of being squeezed between the *Parti Mauricien* and the IFB-Congress alliance, Ramgoolam decided to persuade Bissoondoyal and Dabee to join Labour and the CAM to maintain a united front in the campaign. Ramgoolam made quite a number of concessions, even promising to include the IFB and the Congress in discussions regarding the placing of candidates. For the moderate Ramgoolam, who disliked communal politics, the alliance was particularly distasteful.

### The Banwell Commission

In 1956 the London conference had left the choice of an electoral system to a commission. At first Labour had hoped that the commission could make its recommendations quickly so that elections could be held in June 1966 and the way cleared for independence by December, as suggested by the Colonial Office. The *Parti Mauricien* was less committed to an early election. Duval wanted time to build up an Indian following, to show that he really meant to turn the *Parti Mauricien* into a national rather than a communal party. He also realized that uncertainty was causing economic difficulties for Ramgoolam's government, and he hoped to benefit from growing unemployment and the resulting disillusion. When the electoral commissioners arrived in early January 1966, delay was to Duval's advantage.



Duval's men. In 1963 his car was attacked and overturned by five *Parti Mauricien* agents. *L'Express*, 15 March 1963.

38. It is unclear what form the "backing" took, but it seems likely that those who defected from the Labour party received money in return.

39. *Congress*, 23 February 1966.

40. This account of the Trois Boutiques incident is based on interviews and newspaper reports. It is confirmed by the "Confidential Police Report on the Disturbances at Trois Boutiques."

41. In 1964, the composition of the police was as follows: General Population 754, Hindu 427, Muslim 96, Chinese 40.

42. *L'Express*, 13 May 1965; *Mauritius Employers Federation Newsletter*, May 1965, claims that 103 were arrested.

43. *The Times*, 17 May 1965.

44. *Advance*, 12 April 1965.

45. Mauritius Constitutional Conference Papers, 1965: Memorandum of the Mauritius Labour Party, 14 August 1965.

46. *Ibid.*

47. Mauritius Constitutional Conference Papers, 1965: Proposals of the Independent Forward Bloc.

48. Mauritius Constitutional Conference Papers, 1965: Memorandum of the Muslim Committee of Action.

49. *Ibid.*

50. Mauritius Constitutional Conference Papers, 1965: Statement by Jean Ah-Chuen. Note of a meeting between Lord Taylor and the Hon. J. Ah-Chuen, 13 September 1965.

51. Mauritius Constitutional Conference Papers, 1965: Memorandum of the *Parti Mauricien Social Democrat*.

52. In 1965, Parliament had not yet considered legislation comparable to the 1968 Commonwealth Immigrants Act. But the British government was aware of and opposed to the possibility of large-scale immigration from the colonies.

53. At the time of the conference, Mauritius was selling 380,000 metric tons of sugar at the preferential price of £46 per ton and 270,000 tons at the world price of £18.25 per ton.

54. Mauritius Constitutional Conference Papers, 1965: Memorandum of the *Parti Mauricien*.

55. *Ibid.*

56. Mauritius Constitutional Conference Papers, 1965: Comment by Mauritius Labour Party on the paper by the *Parti Mauricien* on Association.

57. Mauritius Constitutional Conference Papers, 1965. Record of the 1st Meeting held in the Music Room, Lancaster House, 7 September 1965.

58. Mauritius Constitutional Conference Papers, 1965: Record of the 6th Plenary Session, 17 September 1965.

59. *Report of the Mauritius Constitutional Conference 1965*, Sessional Paper No. 6 of 1965 (Port Louis, 1965), p. 21.

60. *Ibid.*, p. 4.

61. *Ibid.*, p. 21.

## Chapter 10

1. *Hansard*, 5th Series, 27 May 1965, vol. 713, col. 817.

2. *Financial Times*, 11 November 1965.

3. *Le Mauricien*, 6 December 1965. Evidence is inconclusive, but a number of highly placed officials suggest that Britain and the United States would have been willing to pay more than £3m. for the islands. The *Sunday Telegraph*, 14 January 1966 estimated that by closing its bases in Aden Bahrein and using Diego Garcia, the British would be able to save £60m. per year.

4. *The Times*, 7 December 1965, estimates that between 150,000 and 200,000 people came to the meeting. Journalistic estimates of crowds were generally unreliable, and reflected the bias of the particular writer. The police, to avoid being accused of taking sides in the fierce competition between the Labour party and the *Parti Mauricien* for popular support, never published crowd estimates.

5. *Le Mauricien*, 6 December 1965.

6. The three electoral commissioners were Sir Harold Banwell, T. Randall, and Colin Leys. A member of the Parliamentary Boundaries Commission in Britain, Banwell knew the intricacies of elections, but Colin Leys was the only member of the commission who had experience in the developing countries and was familiar with the idiosyncratic behavior of politicians in new states.

7. *Report of the Banwell Commission on the Electoral System*, Sessional Paper No. 5 of 1966 (Port Louis, 1966), p. 1.

8. *Ibid.*, p. 6.

9. Between April 1965 and August 1967 five different people were in charge of the Colonial Office: Anthony Greenwood, Fred Lee, Lord Longford, Judith Hart, and Herbert Bowden. These frequent cabinet changes at such a crucial time in Mauritius's history confused constitutional and political developments. Nearly every decision regarding Mauritius in these months involved the secretary of state. No sooner had Mauritian politicians developed rapport with one than they had to deal with another. Promises one secretary of state made were often forgotten or overruled by another.

These changes also had considerable effect on the declining morale of Colonial Office officials, which the Mauritians sensed. The Colonial Office was being dismantled, and the jobs and future careers of its officials were in doubt.

10. Statement at a press conference by Ramgoolam, 31 August 1966; *Debates*, 7 June 1966, col. 991.

11. *Le Mauricien*, 2 June 1966.

12. *Agreement reached in Mauritius on the Future Electoral System on the Occasion of the Visit of Mr. John Stonehouse, M.P., Parliamentary Under-Secretary of State for the Colonies*. Sessional Paper No. 8 of 1966 (Port Louis, 1966).

13. *Mauritius Employers Federation Newsletter*, January 1967 (hereafter

**ANNEX 93**

*The Times*, Sunday 12 November 1965

# MINISTERS RESIGN IN MAURITIUS

FROM OUR CORRESPONDENT

PORT LOUIS, Nov. 12

All three Ministers of the Parti Mauricien who were in the Government have submitted their resignations to Sir John Shaw Rennie, the Governor, after the announcement that Diego Garcia and other islands would be made available to Britain and the United States for £3m. for United States and British defences.

The reason given for the resignations is disagreement between the Parti Mauricien and the Mauritian Government. In exchange for use of the islands they wanted a British-American guarantee to buy Mauritian sugar at a reasonable price and acceptance of Mauritian immigrants in Britain.

Those who have resigned are Mr. Jules Koenig, Attorney-General and leader of the Parti Mauricien, Mr. Raymond Devienne, Minister of State for Development and president of the Parti Mauricien, and Mr. Gaetan Duval, Minister of Housing and Land. They are going into Opposition.

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## ANNEX 94

Seewoosagur Ramgoolam, *Our Struggle* (1982) (extract)

# Our Struggle

20th Century Mauritius  
Seewoosagur Ramgoolam



Presented by  
**ANAND MULLOO**

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# Foreword

In *Our Struggle* the Prime Minister Sir Seewoosagur Ramgoolam himself narrates the epic struggle of the people of Mauritius against the dark forces led by European settlers who opposed our independence, as they did in Angola, Mozambique, Zimbabwe and Namibia. He has succeeded in preserving and consolidating the country's independence through an enlightened foreign policy based on friendship and mutual understanding with all countries to counterbalance the strong pressures from big power politics.

This book underlines the philosophy and guiding principles of a great socialist leader in his long march towards the freedom of his people and country and the construction of a new society based on the ideals of freedom, peace, progress and social justice, parliamentary democracy, human rights, maintenance of law and order. He has persevered in the establishment of democratic institutions, including a free press and an active working class movement. Under his wise leadership has evolved an enlightened mixed economy geared towards transforming an underdeveloped economy into a dynamic industrialising one, equipped with the infrastructure of a Welfare State. This includes free education, a well-developed internal and external communications network, free health services, nationwide pension scheme, advanced labour legislation, generous social services, fair distribution of wealth, the emancipation of workers, youth and women and other socialistic measures.

Briefly, it narrates the peaceful and patient work of restructuring the Mauritian economy and society under the inspiring leadership of an elder statesman, respected throughout the world and having to his credit over four decades of active parliamentary life dedicated to the welfare of his countrymen.

The Ramgoolam Administration has been characterised by a deep concern for power-sharing, by a guarantee and respect of the democratic rights of all citizens enshrined in the Constitution and their widespread participation in the process of economic development and construction of a democratic socialist state. He has thus proved how groundless were the fears of a Hindu domination entertained by opponents of independence in Mauritius. His



<sup>42</sup>"Le Cerneen," 12th May 1951.

<sup>43</sup>Sessional Paper No 3 of 1956

<sup>44</sup>Report of the Mauritius Boundary Commission, Sessional Paper No 1 of 1958, p. 4.

<sup>45</sup>Louis Favorean, l'île Maurice Editions, Berger Levrault.

## Freedom

Following the two earlier constitutional conferences, and the Electoral Boundary Commission, a new Constitution came into force in July 1958 embodying all the gains we had made since 1948: universal adult suffrage, responsible government, ministerial system, the Legislative Council to consist of a majority of elected members<sup>1</sup>, 3 ex-officio and 12 nominated members, the "best loser system" was introduced—under which a maximum of 6 seats were to be given to those who lost narrowly, a Public Service Commission was established to oversee all appointments and promotions in the civil service and the judiciary was made independent.

Elections under the new constitutions were fixed for March 9, 1959. Under the universal adult franchise the number of voters rose from 91,010 in December 1957, to 206,684 of which 191, 586 cast their vote.

The Muslim Committee of Action (MCA) founded by Rajack Mohamed, formed an electoral alliance with the Labour Party. Though some members in our party protested that MCA was a purely communal party, I foresaw that we would never win Independence for Mauritius without the Muslim community's alliance. I could foresee that sooner or later a substantial proportion of the Coloured community would allow themselves to be won over by the anti-Hindu campaign which was now being intensified by Parti Mauricien by using the apparatus of the Catholic Church. Besides, we needed the Muslim votes in many rural and urban constituencies as Sookdeo Bissoondoyal's new party, Independent Forward Block (IFB) and Jules Koenig's Parti Mauricien, posed a threat to Labour in the villages and towns respectively. Labour Party put up 32 candidates, CAM 7, Parti Mauricien 7 and the IFB 30.

The Labour Party's electoral manifesto was published a week before the election. It was built upon the socialist ideas which had

been set out in our 1948 manifesto. Having fought for the establishment of democracy, we now wished to go further. We promised to lower the voting age to 18 years—a promise which we later fulfilled in 1976. We reiterated our goal of establishing a socialistic and egalitarian society, to remove injustices and provide better social services in health. We also pledged to increase facilities for university, technical and commercial education and to make Mauritius into a Welfare state—a goal which we have recently realised after long and patient work—providing security of employment and the setting up of effective National Wages Council and Joint Industrial Councils. To strengthen local democracy we proposed that councillors should be elected both in the urban and rural areas and that they should enjoy greater power. We stressed on the priority of developing the Sugar Industry through a proper irrigation system and supported the Commonwealth Sugar Agreement to guarantee our export market. We wished to promote increase in agricultural production through land redistribution for agricultural diversification and electrification of the whole country. To achieve these goals of a democratic and socialist society, we sought genuine political power complete with an effective ministerial system, an increase in the number of ministers, self-government and Dominion Status for Mauritius.<sup>2</sup>

On its part, Parti Mauricien, a thoroughly conservative offspring of the Oligarchy, also put on a socialist garb by borrowing some ideas from the social doctrine of the Catholic Church.<sup>3</sup> It promised fair wages to labourers, introduction of social security measures and Mauricianisation of the civil service. The IFB offered the workers two square meals a day, work for everyone, distribution of Crown Land to the people, agricultural diversification and effective responsible government with the complete abolition of the nominee system. With the death of Rozement in 1956, and Seeneevassen in 1958 Labour Party had lost two of its ablest front-rank leaders. Guy Forget was elected the President of Labour Party. With a team including newcomers like Kher Jagatsingh, Eddy Chankye, Jean Delaitre, D. Napal, B. Ramlallah and L. Badry besides veterans like myself, Vaghjee, Beejadhur, Ringadoo, Boolell (who had joined us earlier) Roy and Forget himself and with CAM forces including Mohamed, A. Issac, S.Y. Ramjan, M. Nazroo, Peeroo, Dahal and A.H. Osman our alliance swept the polls and won 31 of our 40 seats. P.M. won 3 and IFB 6. Since IFB and Labour shared many

things in common except leadership and organization, some of its elected members like Jaypal and Ramnarain were to join us in later elections. The 1959 elections thus effectively buried the old capitalist system and conservatism once and for all. The people of Mauritius had voted massively in favour of a socialist system and had identified themselves thoroughly with Labour.

Based on our impressive strength in the Council, I became the Minister of Finance and Leader of the House. A new Executive Council was formed, consisting of the 3 ex-officio members and 9 from among the elected and nominated members. When the Governor appointed the 12 unofficial members she had to consult me regarding the choice of 4 nominees. Thus this time Labour had a better control over the Legislative and Executive Councils; 6 of the Members of the Executive Council were Labour, 1 from CAM and there were 2 nominated members.

### **London Constitutional Conference, 1961**

Impressed by our electoral victory, the Secretary of State Ian Macleod visited Mauritius in April 1960. It was agreed to hold a constitutional conference in London to proceed with the next stage on the road to political advance "on the basis of a substantial measure of agreement at the conference itself" as Ian Macleod said on December 5, 1960.<sup>4</sup> Accordingly, a delegation from the four political parties, along with two independent members of the Legislative Council met the Secretary of State in a Constitutional Conference in London between June 26 and July 7, 1961.

At this stage, it is necessary to understand the political developments taking place in Mauritius at the time of this Conference. Parti Mauricien, led by Koenig, backed by the other Franco-Mauritians, feared the inevitability of Mauritius becoming self-governing and ultimately, independent. 17 former colonies in the African continent had already won their independence by 1960. With Harold Macmillan as the British Prime Minister, an era of decolonisation had begun and the winds of change were sweeping across the post-war world. This threw the Franco-Mauritians into a terrible panic as they feared the imminent loss of their power. In an effort to stem the tide, they pooled together all their resources and tried to use every means at their disposal including bribery and corruption on a colossal scale, to win over all potential dis-

sidents and opponents of the Labour Party.

Rozemont and Seeneevassen had been two of the ablest organizers which our party had ever had. Besides, Rozemont had kept together all workers under his strong trade union federation. After his death, trade unions—which had throughout been the traditional supporters of Labour—had fallen into the hands of Moignac, Lacaze and Raymond Rault who deserted Labour to create a dissident party called Parti Travailliste des Travailleurs and started propagating against Labour. Capitalising on Seeneevassen's death, Parti Mauricien used Tangavel Narainen to hire to its fold a section of the Tamil-Hindus. Similarly Parti Mauricien used an ambitious CAM member Ajam Dahal to destroy Razack Mohamed's CAM by founding the Muslim United Party. The strategy of the Franco-Mauritians was to create as much confusion and communal division as possible in order to weaken Labour. Rault, Moignac, Lacaze, Dahal, Ah Chuen and Narainen, though not invited by Ian Macleod, were sent to London by our opponents to create disorder there.<sup>5</sup> But what saddened me most was that even Bissoondoyal lent his voice to the side of reaction when he supported Koenig's demand for separate electoral rolls.<sup>6</sup> How I envied those Black African countries which had all fought for their independence and without dissidence. On the other hand Mauritius like Algeria, Rhodesia, South Africa, Angola, Mozambique and Guinea Bissau was plagued with a powerful reactionary White population which was opposed to the advance of democracy and socialism. The Whites cared only for their narrow, selfish class interests. And to preserve these interests this class could easily buy up a number of corruptible politicians who placed obstacles on the road to freedom of the very people they claimed to represent.

At the conference I asked for self government and dominion status or independence by 1964, with a system of a Prime Minister and Governor General. I demanded that the Governor should gradually yield his powers, that the Attorney General be a political—not an ex-officio—appointment and that the Financial Secretary and Colonial Secretary should be removed from the Legislative Council. I also asked for safeguards for the minorities and that the Head of the House should be made Chief Minister.

Koenig vehemently opposed Independence and proposed instead the integration of Mauritius to the United Kingdom. He also

wanted separate electoral registers and harped on the dangers of communism, Hindu domination and victimisation of the minorities under an independent Labour government in independent Mauritius. He argued that Mauritius was not ripe for independence since there was too much distrust among various communities.

As for IFB, we were unhappy to hear Bissoondoyal saying that he had no objection to separate electoral registers. He argued for a new general election since we had lost all bye-elections since 1959. He insisted on the setting up of a high-powered tribunal which could act as safeguard in the event of Mauritius becoming independent.

Razack Mohamed gave us his full support but added that upon achieving Independence, Mauritius should have two Deputy Prime Ministers, one each a Muslim and a Christian. Ian Macleod stated that a Constitutional advance was "both inevitable and desirable for its own sake." He then proposed an evolution towards full internal autonomy in two stages. The first stage was to take effect immediately wherein the Leader of the House would become Chief Minister empowered to appoint the Governor and we were to have two additional ministers, one each for Communication & Broadcasting and the other for Development.

The second stage would take effect after a new general election. The Legislative Council would be known as Legislative Assembly, the Executive Council would be termed Council of Ministers the Chief Minister would be Premier and be responsible for Home Affairs. A Speaker would be elected by the Assembly, the Financial Secretary would cease to be a member of the Assembly and the Attorney General would be an unofficial member. The Assembly would consist of 40 elected, 15 nominated members.<sup>7</sup>

Clearly all our demands had been agreed to though phased out into two stages. Koenig had failed to convince the conference to arrest the wheel of progress.

### **Triumphant Return**

Upon my return from England on September 18, 1961, I received the heartiest reception of my life. Plaisance Airport was crowded with 60,000 people from all corners of the island. They carried loads of garlands, flowers and banners, decorated cars, lorries and carts, and the people were rejoicing as though

Mauritius had already won independence. The procession moved from airport to Port Louis amidst chorus, songs and cries of victory making its way slowly through triumphal arcs which people had put up along the roads. I was welcomed as if Ram himself was returning from the forest after conquering Ravana.<sup>8</sup>

Receptions were held for me all over the country; from Port Louis to the remotest villages of the north, south, east and west. Words of happiness and praise poured out spontaneously from the hearts of the people. They all recognized "the relentless efforts you have put up to ensure the liberation of Mauritius."

But the final struggle for our liberation was not yet over. The tribute which touched me the most came from Sookdeo Bissoondoyal, who inspite of our personality clashes, had all along shared in the same struggle. On 31 August he had said, "Dr Ramgoolam is a well-read politician. He is not of that class of Indo-Mauritian intellectuals who gradually develop unforgivable arrogance when they come across an ill-dressed person. He hates affectation. Although his knowledge of English is vast, still he clings to the Mauritian accent and in this he differs from the shallow but arrogant so called intellectuals. Dr. Ramgoolam unmistakably is a blend of many mysteries, of many contradictions and of many conflicting loyalties. He is at home anywhere, among the rich of any complexion and among officials however ruthless these may turn out. He knows how and what to speak in moments of crisis."<sup>9</sup> These glowing words, coming from one's own rival, from a "pukka Hindu", a man who had followed the simple, almost ascetic way of life in the Gandhian tradition meant a lot to me and to the people who were to stand solidly behind Bissoondoyal, Razack Mohamed and myself as leaders of pro-independence parties.

Our freedom struggle was rightly regarded the world over as a significant step forward since we had to struggle not only against British imperialism but even more so against the stubborn, and powerfully entrenched Franco-Mauritian Oligarchy which were as opposed to Mauritian liberation as Whites did in Algeria, Rhodesia and Angola. The *New Commonwealth* from London signalled our victory in glowing words: "A dynamic yet soft and unassuming man, Dr. Ramgoolam who was already Leader of the House and Minister of Finance has in fact reached this pre-eminent position after a ceaseless agitation carried on for a quarter of

a century for the rights of the workers and especially those of the sugar industry, the backbone of the economy. Dr. Ramgoolam has, of course, provoked strong reactions in conservative circles which are hostile to his political views but he is liked by friends and foes alike and is assured of an abiding place in the hearts of his fellow country-men."<sup>10</sup>

### The Parti Mauricien Opposition Campaign

Between the 1961 London Conference and the next general election in 1963, the Parti Mauricien considerably improved its position. Parti Mauricien had been the big loser in the 1961 election. After the election, it mobilised all its forces in a powerful bid to oppose the coming of independence. With the help of the white Oligarchy it organised a vast, well-orchestrated campaign based on an anti-Hindu theme. Heavily financed by the sugar industry, Parti Mauricien set about dividing the island into a number of minority groups, which it claimed to represent and defend against the menace of a Hindu majority. Noel Marrier D'Unienville had suggested this strategy in an article in *Le Cerneen* on April 23, 1950. "*Il faut a mon avis que soient formés un parti politique Chretien, un parti politique musulman et un parti politique chinois et que ces trois partis politiques associes par un interet commun, celui d'échapper a l'hegemonie hindoue, livrent bataille ensemble aux prochaines elections selon un plan soigneusement ébauche*".<sup>11</sup> (I believe that a Christian political party, a Moslem political party and a Chinese political party should be constituted and these three political parties should join efforts in order to avoid Hindu hegemony and fight together in a common battle in the ensuing elections according to a carefully elaborated plan.) Parti Mauricien now set about encouraging the creation of a number of small communal parties in a big alliance against Labour. They also began looking for potential allies among the Hindu opportunists who could be bribed to forfeit their country's freedom.

Parti Mauricien had already succeeded in winning a section of the working class Creoles of Port Louis and Plaines Whilhems by enticing Rault and Moignac alongwith their Labour supporters to form Parti Travailleiste des Travailleurs which now claimed to be the real Socialist Labour Party. Rault and Moignac went so



far as to expel us from Labour Party. This was a sad blow in its history which the Labour Party had to face as part of Parti Mauricien's counter-revolutionary tactics. Another citadel of conservatism—the Catholic Church—was also used as a convenient platform to fan the flame of anti-Hindu feelings. The Catholic Church was very much the preserve of the Oligarchy which formed the bulk of the priestly class. The insidious brain washing by the Church resulted in a slow but steady erosion into the broad-based, multi-ethnic foundation of Labour popular support. Besides, the Oligarchy also made use of their historical Christian hegemony and advantages accumulated from two and a half centuries of political and economic domination, strength and experience in management and organization, its vast wealth from the sugar industry which it controlled and its moral ascendancy and traditional leadership over some sections of the population, particularly the Coloured and the Indo-Christians, including the Tamil-Hindus.

### **Divide and Rule**

Parti Mauricien played heavily on the theme of Christian unity, Creole communalism, Tamil and Muslim separatism and caste divisions as instruments to destroy "Hindu hegemony" and "Hindu peril". To divide the Hindus it encouraged setting up of Hindu candidates against other Hindus following the tactics of divide and rule the British had practised under Clive, and the French under Dupleix in India by encouraging their puppet rulers to keep the people under suppression. This tried colonial strategy had been used equally effectively. Parti Mauricien similarly practised this art in Mauritius by using the power of the sugar industry to exploit the poverty and lack of job opportunities among the people. Parti Mauricien bought off many a self-seeking politician with offers of jobs. With the lure of big money extracted from the sweat and blood of agricultural labourers and or artisans from the coffers of the sugar industry, Labour dissidents, political opportunists and puppet leaders hungry for power and publicity, joined the Parti Mauricien bandwagon that sought to counter genuine representation of the people as represented by Labour Party. These people offered themselves to the highest bidder for a mess of pottage and some cheap publicity in the reactionary press represented in *Le Cerneen* and

*Le Mauricien*, unmindful of the daily insults it had heaped on labourers and workers and their immigrant forefathers.

Once earlier we had witnessed the defection of a number of Labour Members of the Council to the side of Franco-Mauritians Philippe Rozemont and Dr. Millien had done so under the cover of Hindu hegemony bogey. Now we were faced with the defection of Rault, Moignac, Lacaze, all of whom belonged to the Coloured community. The effect was calculated to sap the confidence of the Creole voters in the Labour Party. If Rault had sinned because of his over-ambition, Millien had succumbed to his anti-Hindu prejudice. Millien had started well as a progressive in the Consultative Committee and did good work in the role of a public watchdog in denouncing the inefficiency of the Food Control Board after the Second World War. He had also performed well in the Ministry of Labour and Co-operatives. But he had the same weakness as Rault, suffering as he did from *folie de grandeur*; thinking himself to be the Remy Ollier of twentieth century Mauritius. Thus, he allowed himself to criticise his own party on the myth of Hindu hegemony<sup>12</sup>. He rebelled during the sitting of the Electoral Boundary Commission which was to lead Labour to contract an alliance with CAM. Millien was blinded by his own anti-Hindu feelings and chose a course which was to end in his political suicide, a fate which overtook practically all Labour dissidents. The White Oligarchy had always exercised certain control over the urbanised Christian elements of the Tamil-speaking population. Mahé de Labourdonnais had first brought Christian Tamils from Pondicherry and the Malabar coast to Mauritius in the early French period. The Pondicherry Tamils had been assimilated into the Creole population during the period of slavery and even the later Tamil immigrants felt more exposed to the creolising forces sweeping across the country powered by the Christian hegemony. This creolising process destroyed the cultural identity of the Tamils and left them as a decultured and uprooted class, easy prey to the Parti Mauricien wolf disguised as Catholic Church and spreading slogans like "Tamils are not Hindus." Such slogans threw many Tamils into a state of cultural disequilibrium and exercised a destabilising influence on their personalities. The effect of the joint propaganda launched by the Tamil United Party and Parti Mauricien was calculated to attract a section of Tamil Hindus away from the Hindus. The Tamil Hindus were like stray sheep which

wandered off to self-destruction by identifying with Parti Mauricien. On the cultural plane, the pro-Parti Mauricien Tamils were condemning themselves to total disappearance and inevitable disintegration, by allowing themselves to be dismembered and uprooted from the wider and stronger Hindu majority community. The desertion of Tamils from Labour Party was aided by the death of the great Renganaden Seeneevassen in 1958. Labour did not have another Tamil leader of his stature to rally the Tamil Hindus. Da Patten and Tangavel Narainen, at first with a small following, felt free to lift anchor and take the Tamil boat adrift on a self-destructive course. Thereupon, many simple Tamil Hindus felt perplexed, hardly knowing what to do and whether they were Hindus or not. At this juncture, the absence of a competent, well-organized and closely-knit cultured Tamil elite was acutely felt as the Tamils had few roots in India due to the absence of close cultural ties with Tamil Nadu.

Thus the party of the Oligarchy—with the immense wealth of the sugar industry at its disposal, a reactionary press at its command in connivance with the British officials, with the Catholic Church acting as the hidden persuader, in control of all financial, economic institutions and with a reserve army of civil servants belonging to the die-hard Coloured bourgeoisie—formed a formidable counter-revolutionary force. Parti Mauricien had mobilised all these components into a general offensive against Labour. Labour Party, meanwhile, was engaged in the business of administering the affairs of the government. Most of our time, energy and intelligence was taken up in the task of establishing our credentials as good administrators to dispel the widespread colonial prejudice regarding the inferiority of non-White races. We were engaged in the construction of an egalitarian and socialistic society free of the existing glaring inequalities of income. We were laying the foundation of a Welfare State encompassing social services, security of employment, improved living conditions for the people. Ever since we had taken ministerial control over the government since 1958 Mauritius had embarked on the path of socialism. Parti Mauricien was fighting a life-and-death struggle against the inexorable forces of change which were bound to annihilate once and for all the power of the historical bourgeoisie. Being in the opposition, the Parti Mauricien was at liberty to beat its drum in a loudly hysterical anti-Labour campaign based on anti-Hindu hosti-

lity. They aimed to ridicule the majority community in its own eyes and in the eyes of the rest of the population.<sup>13</sup>

### Access to the Civil Service

Since its creation in 1936, the Labour Party had initiated the class struggle in Mauritius. The ruling class then consisted of the Franco-Mauritians who held the levers of power in their hands. They had fought tooth and nail in connivance with the British Government in Mauritius to stifle Labour at birth.

Parti Mauricien was also sowing the seeds of suspicion against Labour Party in the minds of the Coloured bourgeoisie. The fair-skinned upper class among the Coloured bourgeoisie had chosen to identify itself with the Franco-Mauritians but they had been denied the social privileges attached to the aristocratic class of White rulers. This class had produced fine intellectuals and its position stemmed from its educated professionals. This class had owned some landed property and trading concerns, in the nineteenth century but had since been impoverished due to the denial of credit facilities to them by the banks owned by the Franco-Mauritians. This small complex-ridden class depended for its social position on its presence in the Civil Service due to the patronage of the Franco-Mauritians and the British officials. Fearful of its security, it was determined to hang on to the Civil Service, the professions and jobs in private firms.

The wholesale defeat of the Franco-Mauritians in the 1948 General Election had marked the beginning of a new era. Having secured a foothold in the Legislature, the descendants of the agricultural workers and small planters continued their struggle to seize control of the Executive, the Judiciary, trade and commerce, banking and the professions. It was inevitable that the Civil Service too would be thrown open to the educated children of the Indo-Mauritians. The class struggle thus entered the Civil Service too as educated youth from a diversity of races and cultures pushed their way, elbowed one another in competition for a few jobs. Civil Service jobs were much coveted and offered glittering prizes—social prestige, a handsome salary, chances of promotions, job security, pensions, overseas leave etc. Moreover, the Civil Service was the only large employer of educated people. Thousands of Mauritians made all sorts of sacrifices in order to

educate themselves as education was the passport to a civil service job. The privilege of civil service jobs, which the Franco-Mauritians and the Coloured bourgeoisie had thus far monopolised had now to be shared. Diverse passions, ambitions and class and political rivalries now came to be focussed on the Civil Service. As the various ethnic groups started vying for positions in the Civil Service, it was natural that it should also become an object of public criticism. Matters concerning recruitment and promotions in the Civil Service began to be hotly debated, both within the service under trade union pressure and in the press and among social circles.

Before Labour Party took control of the government in 1958, appointments and promotions in the Civil Service were in the hands of Franco-Mauritians who did pretty much as they pleased without concern for aptitude, qualifications or experience.

As Liaison Officer for Education since 1951, I had made it a point to denounce injustice, discrimination and favouritism in the Civil Service including the teaching profession, and I often did so in the Council too: "I think the greatest fraud in the public is the Teachers' Training College. . . . People who have passed the Matriculation, students who have passed School Certificate are found unfit to enter the T.T.C. Others who are recommended privately by some people in this country, and who have passed the sixth standard are taken as students of the T.T.C. Inspectors and Education Officers are appointed without reference to seniority due to family protection and nepotism"<sup>14</sup>. We had to rationalise entry into the Civil Service and base it on grounds of efficiency. We removed communal and class barriers and democratised the institution.

The Civil Service had played an enormous role, perhaps an exaggerated one, in influencing our constitutional, political and economic development. Its democratisation was now used as concrete proof of "Indianisation" and of "Hindu domination", unmindful of the fact that if the majority of the population happened to be Hindu it followed as a logical consequence that Hindus would come to occupy a good proportion of jobs in the Civil Service too. Moreover, the private sector has always been limited in its employment scope and was then virtually barred to the Indo-Mauritian bourgeoisie. Thus with the spread of educational opportunities, the Civil Service had a new breed of members from rural areas.

These new entrants to the Civil Service looked for support from the elected members from their community. This social mobility was described by N.M.U. and Masson in communal terms to stir up class jealousy among the Coloured and the Franco Mauritians. They were told that they had been displaced from their social positions by the Indo-Mauritian bourgeoisie. Masson cried at *Le nationalisme capitalisme oriental*. Labour Party was thus mischievously described as being under the control of nationalist-capitalist Hindus hailing from the rural small-planter class<sup>15</sup>. In actual fact, Labour Party had established a more egalitarian society where inherited privileges were being swept away. We had ushered in an era of emancipation of the working classes and equal opportunities for personal development for everyone. But this too was distorted by Parti Mauricien in their battle against Independence and progress by whipping up the familiar bogey of Hindu hegemony<sup>16</sup>. The entry of Indo-Mauritians into the Civil Service was used by N.M.U. as positive proof of Indianisation of the country and the capture of the bureaucracy, trade and commerce by *Hindus Ramgoolamistes*. Freedom, democracy, socialism and the right to vote were thus denigrated and deliberately misrepresented in order to rally the Coloured population into opposing Independence. The Coloured people feared a competitive society in which all would have equal opportunities on the basis of merit and ability. They thus readily believed that the Civil Service had been taken over by the new Indo-Mauritian bourgeoisie under the aegis of the Labour Party. Misled by the Franco-Mauritian demagogy they came to associate the democratisation of our society with their own downward social mobility, loss of social prestige and status. In other words, a section of the Coloured bourgeoisie came to believe that they were the natural allies of the Whites against the rest of the Mauritian population.<sup>17</sup> The Civil Service thus became another nest of reaction. The predominantly Coloured staff at the lower levels, and Whites at the higher and professional positions identified themselves more with Parti Mauricien and were reluctant to implement socialist legislation passed by Labour Party. This situation was further exacerbated by the fact that after the death of Rozemont and the defections of Moignac and Rault, the Federation of Civil Service Unions (FCSU) had fallen into the hands of the reactionaries. Herve Duval, the brother of Gaetan Duval, who was second-in-command of Parti

Mauricien had taken over the FCSU and waged a cold war against the Labour Government. In fact Parti Mauricien even tried to win over to its side the small-planter class which was a traditional supporter of the Labour Party. The Labour Government had imposed a sales tax of 5% on the export of sugar in order to increase government revenue and to facilitate redistribution of the country's wealth. The big sugar magnates resented this tax and tried to rally the small planters against us without much success.

Parti Mauricien had thus emerged as a militant opposition to Labour Party, both at the central and local government levels. A Hindu, non-White Chief Minister, was more than what they could digest. According to their ideology, a person of Asiatic origin was incapable of running a country and ruling over Whites. I thus became more and more the object of hostility of the communal and reactionary opposition. Amidst such tremendous tension, the battlelines were drawn for a new general election in the country.

### 1963 General Election

The Legislative Council was dissolved on September 3, 1963 and new general elections were fixed for October 21. The Labour-CAM-alliance had to fight IFB's strength in the countryside on the one hand, and Parti Mauricien along with MUP and TUP in the towns. Guy Balancy, Dr. Phillippe Forget, Deepchand Beeharry and Rabin Ghurburrun—all bright young men of promise—were some of the new faces in Labour. Parti Mauricien also put up a whole crop of new candidates like Rima, Devienne, Bussier, St. Guillaume, Lesage and Patten while IFB introduced men like Aneerood Jugnauth, Jeetah, Basant Rai, Tirvengadam and Mahesh Teeluck.

Though Labour and IFB were contestants in the election, both shared the same struggle for democracy, independence and establishment of socialism. The common enemy was Parti Mauricien and it did not hesitate to use dubious means like bribery, lies, intimidation and communalism in an effort to defeat Labour. It focused all its virulent attacks on my personality. However, the strange thing was that their attacks only served to glorify me in the eyes of the downtrodden people of Mauritius who had somehow come to see in my struggle and personality a reflection of their

own aspirations. This confidence of the Mauritian people has always served to strengthen my determination and dedication, and achieve some measure of success in our struggle for creating a just society. As a matter of principle I have always ignored attacks on my personality and I have left it to my colleagues—who would often get upset over these—to answer such attacks while personally taking them with a calm, philosophical smile which both irritates and disarms my opponents.

The regrettable feature of these elections was the birth of violence in our politics. The outbreak of violence coincided with the emergence of Gaetan Duval as a popular hero among the Creole masses. Violence is against my nature, I am a man of peace and have always disliked violence throughout my life. I believe violence and tactics of intimidation are weapons of the weak. I prefer the application of political skill and acumen to outmanoeuvre one's opponents. Parti Mauricien took to violence to scare away the peace-loving Hindus and to inflame to red-hot the latent anti-Hindu hostility among the rest of the Mauritian population. Parti Mauricien openly projected the idea that every Hindu was waiting in ambush to expropriate the property and privileges of Whites while Hindus were actually being victimised themselves in the sugar estates by the non-Hindu population. Everything came to acquire a communal hue and Hindus were painted as the "Asiatic invaders", a barbarian horde which needed to be beaten back. I came to be regarded as the generalissimo leading an Asiatic army while the Franco-Mauritians were projected as brave and staunch defenders of European civilization under a grave threat of being over-run by oriental culture.<sup>18</sup> The Hindus and other supporters of Labour reacted to Parti Mauricien's anti-Hindu campaign by drawing together even more solidly behind Labour. And this was cited as further proof of impending Hindu domination.

In the last days of the campaign, Parti Mauricien and some of its strong-men violently broke-up a Labour Party meeting in Curepipe and insulted our candidate, Robert Ahnee. In another Labour meeting in Mahebourg in the south of the island, five agents of Parti Mauricien used violence, precipitated a riot and tried to overturn the car of Harold Walter, our candidate for that constituency. Then they spread into the town creating terror and violence wherever they went. They broke into a hotel and wound-



ed the inspector of police, Radhakrishna, with a sickle.<sup>19</sup>

The results of the 1963 election gave us a reduced majority compared to 1959. Labour and CAM won 23 seats while Parti Mauricien secured 8 and IFB 7. Labour had obtained 49% of the seats and the remaining three parties put together had won 51%. The 40 small single-member constituencies had encouraged the play of communal forces, of corruption and bribery. 3 out of Parti Mauricien's 8 elected members were white—Poupard at Midland, Maingard at Floreal and Koenig at Beau Bassin—and the remaining 5 were Coloured—Duval, Devienne, Rima, Ythier. It became obvious that the Coloured were identifying themselves with Parti Mauricien under Koenig and Duval and even Labour's Coloured victors—Leal, Balancy, Dr. Chaperon, Forget and Walter—had had to depend for success largely on the votes of Hindus. This fact was misconstrued by our opponents and presented as evidence that Labour was predominantly Hindu-dominated. History testifies to the fact that Labour has remained the only truly national party since its creation in 1936.

At Riviere du Rempart in the north, the IFB candidate, A. Jugnauth had completely knocked out A. Beejadhur from the political arena while at Petite Riviere IFB's Padaruth defeated Jagatsingh in an unexpected result. Generally speaking, towns with a Coloured population had voted Parti Mauricien while Labour had had to depend mainly on the vote of Hindus and some marginal Muslim votes. The bulk of the Muslims had shifted their alliance to Parti Mauricien. Labour retained its staunch support from the socialist-minded Creoles while a section of the urban Tamils had wavered in their political allegiance to Labour.

Upon analysing the results of the 1963 election, I identified the following weaknesses in Labour:

(1) the image of the then President, Dr. Chaperon, was not sufficiently striking as compared to his predecessors, Dr. Curé, Anquetil and Rozemont who had all been immensely popular among the mass of Creole workers.

(2) The communal campaign of Parti Mauricien had had its effect in eroding Labour's supporters.

(3) Parti Mauricien was now the major opposition party and could be expected to fight us in a last ditch battle in the near future.

(4) The Coloured bourgeoisie regarded the challenge to their

traditional dominance of professional cadre from the up-and-coming educated classes comprising of the children of workers and labourers as a result of Labour's policy of creating a just and fair society and largely voted against us.

(5) Labour's alliance with CAM had not pleased the Coloured who came to believe in Parti Mauricien's propaganda that Labour preferred to disregard the interests of the 193,000 Coloured in favour of the 110,000 Muslims.

Given this situation I thought it desirable to form a coalition government in order to reconcile the various differences, and to pacify the anti-independence sections of the electorate. This was needed to ensure peaceful implementation of the second phase of the London Conference. Negotiations over distribution of ministerial seats were still underway when Parti Mauricien made things unnecessarily difficult by claiming an exaggerated share. The Governor, Sir John Shaw Rennie, also failed to successfully arbitrate on this question. The Assistant Secretary of State flew in from London but even he failed to satisfy the greed of Parti Mauricien which insisted on 3 seats for itself and was also opposed to Labour getting 6. A new constitutional conference then took place in London where the composition of the Coalition Government was agreed upon as follows: Labour would have 6 ministries and 2 parliamentary secretaries, Parti Mauricien 3 ministries, IFB 2 ministries plus 1 parliamentary secretary, and CAM would get 2 ministries. It had taken us four months after the elections to arrange this coalition.

During this interim period, Parti Mauricien had organized two massive and violent protest meetings and demonstrations outside the Council. The first one was to protest against my motion in favour of full self-government wherein I was to become Premier on November 19, 1963. One day before that, cars equipped with loudspeakers were sent to all the towns, inviting people to assemble near the Council in Port Louis. The shouting and clamouring crowd then staged a march to Champs de Mars where bread and "Purlait" milk was distributed. The mob was then roused to the pitch of excitement and began undressing women in sarees all the while yelling "*enveloppé nous pas oule*" (down with Hindu women)! They threw stones on passers-by and on the police and broke the window panes of the Council building. My colleagues panicked. Some of them including Mohamed and Bissoondoyal

ed by tear gas. Following this outbreak of political insanity Rault and Marcel Mason joined the Labour ranks.

On December 11, 1963, the second constitutional phase came into effect. The Legislative Council became the Legislative Assembly and I became Premier. The municipal elections took place on December 15, 1963 and riding on its crest of communal fanaticism, Parti Mauricien once more confirmed its popularity among the Creole electorate in the urban areas of Port Louis and Plaines Wilhems. It also carried with it a good number of Tamil and Muslim voters and managed to capture 50 out of the 64 seats in seizing control of the municipalities of Curepipe, Vacoas-Phoenix, Beau-Bassin, Rose Hill and Port Louis. They failed to win Quatre Bornes which had been ably defended by the Labour stalwarts Forget, Dr. Chaperon and Delaitre.

Encouraged by this unprecedented victory, Parti Mauricien organized another mass meeting at Champs Mars in Port Louis. It reflected the party's classic fascist outlook as the demonstrators marched in blue shirts and caps, carrying flags, music and fanfare on January, 12, 1964. In that meeting Parti Mauricien laid its claim to 3 ministries granting only 5 to Labour. As was becoming usual, in all such demonstrations, I was the chief object of attack but I did not give in and this matter was finally settled in London.

### All-Party Government

While the Opposition heaped insults on me, thousands of my partisans were daily honouring and garlanding me in public gatherings throughout the island. The poet Malcolm de Chazal wrote in *Advance* that he saw in me a man of letters, of culture and a great statesman: "*Dr. Ramgoolam que peu de gens connaissent a Maurice; le lettré, l'homme cultivé assez élevé pour tout voir de haut, qui voit l'avenir qui en meme temps prévoit, et qui a de l'audace. . . le plus grand homme d'état que nous avons eu*"<sup>20</sup> Still later in October the same Franco-Mauritian poet added "Dr Ramgoolam possesses great knowledge. He is like a father to all Mauritian people. Dr. Ramgoolam is a friend, a compatriot, a simple ordinary man. Though he has risen so high he is still so near to us. See in this man a symbol of our future. Let us put

we shall have nothing to fear". And it is worth recording that no less a man than Dr. Maurice Curé, the founder of Labour Party had showered his blessings upon me in a public meeting at Champs de Mars: "Ramgoolam who has great knowledge, intelligence, personal qualities, wide experience is the man who is the most qualified to lead our country. He is the right man in the right place."<sup>22</sup> Such testimonials from well-known local and international personalities helped Labour Party to confirm its image of respectability and competence, to sustain people's confidence in our government which was being challenged by our opponents who suffered from an acute stage of communal blindness as regards all children of labourers and coolies.

But the honour that I enjoyed more was the popular welcome I received when I landed at Plaisance Airport on March 9, 1964 after the constitutional conference in London where we had agreed on a workable formula for an All Party Government. That sunny afternoon my head filled with joy as I alighted from the plane to a vast, cheering crowd of 50,000 people carrying banners, wearing red shirts, shouting slogans to the accompaniment of bands and offered me with flowers the warmest welcome ever accorded a Mauritian. Thousands more lined the road from Plaisance to Port Louis and stopped me all along the way to garland me and shower flowers upon me amidst songs, applause and cheers. The whole island was bubbling with the excitement of victory and wiping away for good the memory of the fascist demonstrations of October 1963 and January 1964. It was a spontaneous national festival alive with songs, music and dances of a people fully awakened to the glory of Independence. The procession moved on slowly, thickening and lengthening en route and it appeared as though all the cars, buses, lorries and vans of the country had joined in. As the front end reached Beau Bassin the rear was ten miles behind at Forest Side thus stretching the entire length of the Plaines Wilhems district.<sup>23</sup> On March 13, 1965 the Council of Ministers of the All Party Government met in the Legislative Assembly for the first time and I was raised to the title of Premier.

Hardly a month later on April 6, 1965, the Secretary of State, Mr. Anthony Greenwood landed in Mauritius. Once again the Parti Mauricien organized a mass demonstration in Curepipe and Forest Side, two strongholds of the White community. It hired

buses and lorries to take people to Curepipe for a large show of strength. On our side we organized a massive enthusiastic welcome at the Quatre Bornes roundabout. Greenwood had been an old acquaintance of mine since my student days in London and his father, the famous Greenwood senior, was one of the popular leaders of the British Labour Party during its very early days. I now held discussions with him and introduced him to ministers, representations of business, trade unions and local councillors so that he could grasp the mood of the nation. It was decided to hold a constitutional conference in London later in the year from 7th to 24th September.

Greenwood also proposed sending a constitutional expert to study conditions on-the-spot and to draft a new constitution which would best suit the interests of an evolving Mauritius. Accordingly, Professor de Smith visited Mauritius in July 1965. As Mr. Greenwood put it, his report pointed the "way forward for constructive political development." De Smith recommended twenty 3-member constituencies to provide adequate safeguards for the representation of minority interests, and to discourage communalism. He rejected separate electoral registers which had been repeatedly proposed by the PMSD. Thereafter, British Members of Parliament—Mr. Tom Driberg of the British Labour Party and Sir Nigel Fisher of the Conservative Party—arrived in Mauritius. Mr. Driberg reiterated that it was the declared policy of the British Prime Minister Mr. Harold Wilson to proceed with decolonisation. He thus dispelled any illusion about a possible integration of Mauritius with Great Britain or its continuation as a colony.

### **The 1965 Constitutional Conference**

Then came the final and the most important constitutional conference which took place at Lancaster House in London from September 7, to 21, 1965. The objective of the conference was "to reach agreement on the ultimate status of Mauritius and the time of accession to it." Mr. Greenwood wished to "end as quickly as possible the present period of uncertainty—a malaise which had doubtless contributed to recent civil disturbances." He further set the tone of the conference by affirming that the "background against which this conference is being held is one of gradual and steady progress achieved by discussion and agreement."

On behalf of the Labour Party, I stated that we had received a clear mandate from the people during the last three general elections, and that the conference must now complete the process of the establishment of full democracy. I asked that Mauritius be granted Independence for which firm date should be fixed and that the voting age be lowered to eighteen years. I also recommended that the office of Leader of the Opposition be created and that there should be 20 of 3-member constituencies. Further, we suggested that the Constitution could only be amended by a two-thirds majority. We also emphatically rejected the concepts of separate electoral rolls and any Association or Integration of Mauritius with Britain or a referendum on this subject.

In his turn, Koenig, the leader of Parti Mauricien, spoke against independence and in favour of an Association with Britain. Arguing that the results of the three previous elections were irrelevant since Independence had not then been an issue he said that Mauritius was too small and isolated and economically too vulnerable due to its over-dependence on sugar and cyclones to be viable as an independent country. He further argued that as an associated territory with Britain it would be easier for Mauritius to join the European Economic Community should Britain ever accede to the Treaty of Rome.

After hearing all the arguments, Mr. Greenwood concluded on September 24, that a referendum would only prolong the current state of uncertainty. He turned down the proposal of an association with Great Britain and stated that "It was right that Mauritius should be independent and take her place among the sovereign nations of the world." An Electoral Commission would submit its report and Mauritius would accede to Independence if the majority of Mauritians voted for it in the next elections.<sup>24</sup>

Commenting on the work of the Constitutional Conference, *The Guardian* said, "the arguments against independence of the PMSD, logical and impressive though they may be, are the arguments of a minority against the facts of politics."

As a result of our victory at the conference the PMSD left the Coalition government and started to mobilise all its resources to defeat us in the ensuing election.

Upon my return from the triumphant constitutional conference I was once again warmly received at the airport and cheered all along the way to Port Louis by thousands of enthusiastic people.

On October 15, I told the people through a press conference about the multiple advantages of an Independent Mauritius, within the Commonwealth and the safeguards instituted for minorities.

The PMSD meanwhile had intensified further its anti-Indian hostility and created a climate of intimidation and violence bordering on terrorism. To counter PMSD the all Mauritius Hindu Congress—a Hindu fanatical organization—was formed by Aneerood Jugnauth, Dabee and Varma. But I have always been opposed to such purely communal parties and these inexperienced leaders committed a series of political blunders until this organisation disintegrated by the eve of the elections.<sup>25</sup>

Then abruptly choosing another pact, PMSD leader Gaetan Duval opened out his arms to Hindus in a public meeting at Champs de Mars on December 14, 1965 in a vast campaign meeting with posters calling for national reconciliation and bearing the slogan: "*Hindu mon Frere*" (Hindu my brother)<sup>26</sup>. Henceforth, PMSD also started calling itself nationalistic and socialistic and its newspaper *Le Mauricien* started insisting that Labour Party was in fact no longer socialistic.

During this period, I had to fly to London for a surgical operation. The freedom-loving people of Mauritius offered their prayers for my safe-keeping in temples and shrines. I recovered and flew back home in the same plane which brought Sir Harold Banwell and the other Electoral Commissioners on January 3, 1966.

### **Banwell Commission : The Rape of Democracy**

Addressing the Banwell Commission on January 10, 1966, I said that Mauritius had chosen to follow the British Parliamentary System which suited our country and people best and that it was unadvisable to change over to any other constitutional pattern. Also the Constitution of Mauritius provided adequate safeguards for minorities—in fact more than any other country. I also stressed the need to strengthen the democratic foundations of Mauritius and denounced reactionary political parties which were using big money to create separatism and disunity among the people of Mauritius. I expressed unhappiness that certain irresponsible people were causing violence in an attempt to destroy our democratic institutions; they had learnt nothing of the inexorable movement towards freedom in Africa, Asia which even Europe was supporting.<sup>27</sup>

In his turn, Koenig argued in favour of a system of Proportional Representation and Party List as in British Guyana. Bissoondoyal also opposed, stating that these led to representation of parties, not of people and that these would give far too much arbitrary power to party leaders. The Banwell Commission ended its work on 31 January.

On April 17, 1966 we held the Labour Party Annual Congress at Quatre Bornes to which two Malagassy delegates from the Malagassy Social Democratic Party were also invited. The theme of the seminar on that occasion was "Socialism as an instrument of planning and co-operation for the social, cultural and economic development of developing countries." In my opening address I again emphasized that socialism was a unifying force in the whole world, transcending all barriers of race and religions. Socialism, I said, would promote social, economic and political reforms, help to raise the living conditions of the masses who lived in poverty and insecurity. It was agreed that only by adopting socialist principles could problems of underdevelopment be solved.<sup>28</sup>

Then I flew to Stockholm where I represented Labour Party at the Congress of the International Socialists to which our party was affiliated. I urged upon the International to enquire into the credentials of PMSD which had sought affiliation to it. Later Albert Carthy, the Secretary, came in January 1967 to make such an investigation, and subsequently categorically rejected PMSD's application, convinced of its anti-democratic and anti-socialist record.

On May 31, 1966, the report of Banwell Commission was laid on the table of the Assembly. I agreed to many of its recommendations: an Assembly of 62 members with 20 constituencies each returning 3 members on the principle of block vote, i.e., a voter is entitled to vote for three candidates, the setting up of an independent Electoral Commission to supervise all future elections and turning of Rodrigues into one large constituency returning 2 members. But I took strong opposition to the Commission's proposal for introducing the hated "corrective system".<sup>29</sup> Along with my colleagues, Mohamed and Bissoondoyal we rejected it in the Assembly and I described it as "diabolical system". This is a Machiavellian innovation. . . a great political crime is being perpetrated; in fact a political rape of democracy". . . and will "undo the achievements of their (people's) epic struggle for political, econo-



mic and social justice.”<sup>30</sup>

Two days earlier, Labour Party and its allies, IFB, CAM with the Congress had taken this matter to the people at large through a mammoth meeting in Port Louis wherein we had unanimously rejected the “corrective system”. To make our opposition more effective, I despatched cables to leading world newspapers in Europe, America, Asia and Africa and to most Commonwealth Prime Ministers and other Heads of Governments seeking their support against it.<sup>31</sup> As a result of our effective opposition, Mr. John Stonehouse, Assistant Parliamentary Secretary, quickly flew into Mauritius, and after discussion with us replaced the corrective system by the system of “8 best losers.”<sup>32</sup>

### **An Epic Struggle**

Now finally, we embarked on the ultimate step of our epic struggle. To canvass world opinion in favour of our independence, and to restore the confidence of our Western-oriented Franco-Mauritian countrymen, I visited many western countries, including Britain, France and Canada during my participation in the Commonwealth Finance Ministers Conference held in Canada in September of the same year. I laid down the foundation of friendship between Mauritius and the Commonwealth and Western countries which was very necessary given the physical distance separating our Island from those countries. Ever since, I have always attached great importance to such trips which have yielded tremendous benefits for our country.

Meanwhile, PMSD brought in new tactics in their campaign against independence. To destroy all confidence in our government and to prove that Labour would not be able to govern without the financial support of the capitalists, it encouraged the sugar industry to obstruct the economic development of Mauritius by slowing down growth and creating unemployment. The banks, also owned by the same class, lent their full support in this campaign to create a climate of economic insecurity and bankruptcy. Then in March 1967 PMSD urged its partisans to withdraw their money from post offices and savings banks.

In this manner, PMSD intensified its fear campaign in an effort to make people believe that independence would spell the ruin of the country and bring with it famine and starvation. In fact,

many of its partisans were seized with such panic that thousands of them had begun emigrating to Canada and Australia. 4,000 people emigrated to Australia in 1967, a process that had started since 1965, coinciding with the anti-independence campaign launched by the Parti Mauricien.<sup>33</sup>

The reactionaries seized every single opportunity to create civil disturbances and try to generate a general climate of fear, insecurity and loss of confidence in Labour government in an effort to prove that we were unable to govern. One of the ugliest of those demonstrations took place in the town of Quatre Bornes, on March 28, 1967 when PMSD hecklers disturbed our annual congress, demonstrated against James Johnson who had come to attend it. Johnson was an old friend of Mauritius, a British Member of Parliament belonging to Labour Party and a close adviser of Mauritius Labour Party. We answered back by organizing an important public meeting at Place du Quai in Port Louis where Johnson was warmly applauded.

PMSD also bought off a number of Hindu candidates, and put them up as pawns in many urban and rural constituencies in order to siphon off some Indo-Mauritian votes. This was the same party which had all along been consistently anti-Hindu since its origin. The once all-powerful White Oligarchy had fought tooth and nail to maintain its hegemony through its control of the State apparatus, Civil Service, judiciary, legislature, the professions, agriculture, the economy, the financial institutions, trade, import and export. The Indo-Mauritians had had nothing but determination to pursue our epic struggle and to claim our legitimate share in the wealth which our own people had been producing with their sweat and blood.

Since the time we had been producing our own elite in the professional and intellectual fields, thanks to the struggle of our small-planter class, we had been regarded by the Oligarchy as "*envahisseurs asiatiques*" and "*accapareurs*". I was called the "*chef khooniste*", "*le pontife numero un du khoonisme militant*"<sup>34</sup> simply because I had managed to penetrate the State apparatus and had successfully led the fight for the right to vote, self-government and Independence. The old Oligarchy had all along been anti-Indian in their propaganda. They had indulged in psychological warfare and played on the nerves of the peace-loving inhabitants of the country fomenting unnecessary fears

about the Hindus, creating crucial communal and racial disharmony and inventing all sorts of false slogans like "peril Hindou", "Indianisation", "annexation of Mauritius to India", the "arrival of shiploads of *langoutis*", the "swamping of Western culture and civilization under Asiatic barbarism". More recently, in October 1963, to oppose the implementation of stage two and the consolidation of the Ministerial system under a Chief Minister who happened to be "Malbar" they had spread terror and insurrection in the country and openly undressed Hindu women with the wild cries of "*enveloppé nous pas oulé*", "*Malbar nous pas oulé*". Now, in an effort to confuse the Indo-Mauritians, they had the cheek to come to the Hindus asking for votes through their puppet Hindu candidates. At the same time the Church kept preaching its anti-Indian ideology. And what had been the sin of the Hindus: to have asked a share in the civil service, in the judiciary, in commerce, in education, in the industry of transport and to assert their dignity? And what sin had I committed in assisting a democratic and socialistic evolution of Mauritius by channelling the legitimate aspirations of the downtrodden towards a better and a happier life? And now, we had reached the last stage of the battle, the very last campaign to take over power, once and for all, from the hands of the Oligarchy. But, the people, and particularly, the Indo-Mauritians were not so naive. They had long suffered from anti-Indian hostility. The ill-treatment, insults, exploitation and collective jealousy they had experienced was still so raw that they refused to allow themselves to be taken in by false propaganda of the traditional bourgeoisie now fighting to retain their hegemony. Labour had won every single election since 1948 and I was confident that with the support of CAM and IFB, our victory would be ensured by the freedom-loving people, millions of rupees and the flood of PMSD's anti-independence posters and hysterical articles in the reactionary papers *Le Mauricien* and *Le Cerneen* notwithstanding. The Mauritian people's instinct for liberty would overcome all the "communal" propaganda invented by the dark forces of reaction. People knew, and we had proved it, that there was only one genuine national democratic and socialistic party—Labour. People could see for themselves the multiple benefits they had derived in all fields of life by supporting Labour Party: education, housing, employment, health, family allowance, old age pension, better conditions of work and

security of employment, the growth of trade unions, civil rights, a share in the Civil Service, trade, business, industry, import and export, insurance and banking. Labour had thus ushered in a slow, silent revolution. People were also perfectly aware of the machinations of the Oligarchy trying to defend their privileges. In explaining all our past achievements, and providing a correct interpretation of the situation to the people, Labour has always had the benefit of having a number of intellectuals—including progressive writers, poets, novelists and journalists—in its ranks dating from the days of Manilall Doctor. And now there were R.K. Boodhun, Aunauth Beejadhur, J.N. Roy, Basdeo Bissoondoyal, Hazareesingh, Nepal, Kher Jagatsingh, Ramlallah, Beeharry, Edoe, Buckory, Mulloo, Marcel Cabon, Hervé Masson, Philippe Forget, Guy Balancy and a host of others. We also had an army of freedom-loving volunteers working for us all over the country. Consequently, we faced the election on August 7 with confidence and emerged victorious with 39 seats, conceding only 23 to PMSD. We had won an historic victory. At last the citadel had been captured by our people of Mauritius and they were now free. A few of our leading members like Guy Forget had, however, been defeated, as was PMSD's leader, Jules Koenig, in Vacoas.

On August 22, 1967, I tabled in the Assembly the historic motion to give effect "to the desire of the people of Mauritius to accede to independence within the Commonwealth of Nations." I reminded the nation that "it is at once the end of a journey and the beginning of another. Those who oppose progress and the rule of law should realise the silent revolution which has taken place in Mauritius and they should understand that we must live in the new world that had just been born in Mauritius. . . It is unfortunate that some people still believe in the superiority of a certain class. . . It might be said that people who have monopolised political and economic power for over a century should fight to the death before surrendering any of their feudal prerogatives. . . In this atmosphere of freedom and equality a new spirit and endeavour will seize our people and in this century a hope of a new Mauritius is being born."<sup>25</sup>

In the six remaining months to Independence Day, the mood in Mauritius underwent a change as people began preparing for the great day. But the vicious communal hatred which PMSD had been nursing now exploded among the hooligans and hirelings

it had retained in its service to fight against supporters of Independence. A premature internecine quarrel broke out among the partisans of PMSD in Port Louis and spread as racial riots in Plaine Verte and Roche Bois, casting a dark cloud over the historic celebrations. The enemies of independence and social progress had goaded their hirelings into such a bloody riot, that we were forced to declare a State of Emergency to protect the life and ensure the security of the citizens. Earlier, in 1965, too, we had had to pass the Public Order Act under the menace of racial riots instigated by the old Oligarchy as the feudal barons of pre-independent Mauritius fought a last, desperate battle to maintain their old privileges.

Independence was celebrated in Port Louis on March 12, 1968 under a glorious sunny sky and the Mauritian flag was unfurled in the fresh breeze blowing across a free and independent young country. That brief moment appeared to me like a glimpse of celestial bliss and a tear rolled down my face in memory of my friends Anquetil, Rozemont and Seeneevassen with whom I had fought side by side for this day but who were not alive to witness that glorious occasion.

Messages of congratulations poured in from all parts of the world. This little piece came from a speech made on March 11 by Anthony Greenwood: "You, Prime Minister, have during more than twenty years been the principal driving force leading your country forward. You have been the principal architect of the new nation."<sup>38</sup>

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## ANNEX 95

- A. Ramaoutar Mannick, *Mauritius: The development of a Plural Society*,  
(Nottingham: Spokesman, (1979) (extract)

# Mauritius:

## The Development of a Plural Society

*A. R. Mannick*

Nottingham,

Spokesman,

1979



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*To the Youth of Mauritius to whom  
will fall the opportunity and the honour  
of building in Mauritius a unified and  
integrated society.*

... and desirable but that the rights and liberties of the various communities must be safeguarded". At this Conference semi-autonomy was discussed and decided upon and the principles of it laid down. It was to take place in two stages.

The first stage was to be effected at once. Immediate measures were to be taken to create the post of the Head of the Government. The leader of the party in power would take the title "Chief Minister". The Governor would have to consult him concerning the nomination and the removal of ministers, the allocation of jobs to ministers and the opening, extension and dissolution of Parliament.

The second stage, which was to take place in February 1964, covered the detailed programme decided by the Conference in 1961 which constituted the foundation of a new Constitution to be adopted after the next general election on the conditions that out of the election came a majority party which would be prepared to accept the changes.

The Chief Minister would be given the title of Premier, the Executive Council would be called the Council of Ministers, and the Legislative Council would be renamed the Legislative Assembly. The Council of Ministers, however, would not be a purely majority Government, but would continue to include representatives of other parties and elements which accepted the invitation to join the Government and could be amenable to the principle of collective responsibility. The Chief Secretary (formerly the Colonial Secretary) would continue to be a member of the Executive Council and would become Minister for Home Affairs, whilst an unofficial Deputy Minister for Home Affairs would also be appointed.

The Labour Party and the Muslim Committee of Action agreed, reluctantly, to accept these proposals, which were rejected by the Independent Forward Bloc and the Parti Mauricien.

At the London Constitutional Conference, held in September 1965, and attended by representatives of all the political parties in the Mauritius Legislative Assembly, it was decided that Mauritius should become an independent State within the Commonwealth by the end of 1966, after a period of six months of full internal self-government. The Parti Mauricien, the second largest party in the island, quit the Conference before it ended and was not represented at the final session.

The Mauritius Labour Party and the Independent Forward Bloc advocated full independence for Mauritius, whilst the Muslim Committee of Action was also prepared to support independence, subject to electoral safeguards for the Muslim community. The Parti Mauricien had wished to continue "free association with Britain" and called for a referendum to decide the matter. However, in view of the lack of unanimity amongst the Mauritian parties, Mr Anthony Greenwood, Secretary of State for the Colonies, stated that the British Government, after careful consideration, had decided that it was "right that Mauritius

should be independent and take her place among the sovereign nations of the world".

At this Conference the Mauritian parties also failed to reach agreement on the electoral system to be adopted under the self-government Constitution. A further Electoral Commission was therefore appointed to make recommendations on the most appropriate method of allocating seats and on the boundaries of electoral constituencies.

The Electoral Commission was to be asked to follow definite principles:

1. The system must be based on multi-member constituencies.
2. There must be a common electoral roll with provision for fair representation of the principal section of the population.
3. No encouragement must be given to the multiplication of small parties.
4. There should be no nominated members.
5. Provision should be made for the representation of Rodrigues, a dependency of Mauritius.

The Electoral Commission, under the Chairmanship of Sir Harold Banwell, visited Mauritius in January 1966. The recommendations of the Banwell Report, published at the end of May, 1966, were not acceptable to Mauritius, and Mr John Stonehouse, Parliamentary Under-Secretary of State for the Colonies, visited the island to discuss the matter. The result of the discussion was that, in addition to the 60 directly elected members from Mauritian constituencies and 2 from Rodrigues, a fixed number of 8 specially elected members were to be returned from amongst unsuccessful candidates who had made the best showing in the elections. The first four of these seats were to be given, irrespective of party, to the "best losers" of whichever communities in the island were under-represented in the Legislative Assembly after the constituency elections; the remaining four seats were to be allocated on the basis of both party and community. Party alliance as well as individual parties were to be permitted to qualify for the "best loser" seats.

All the political parties which had campaigned for Independence campaigned together against the system recommended by the Banwell Commission. The main objection was the recommendation that "If any party received more than 25 per cent of the total votes cast at a General Election but secured less than 25 per cent of the seats in the Assembly and if, after the operation of the 'constant corrective' it still does not have 25 per cent of the seats, then sufficient seats should be allocated to that party to bring its share of the total number of seats in the Assembly up to the nearest whole number exceeding 25 per cent . . ." The reason for the rejection of this clause was that it could very well result in a potentially dangerous vote being placed in the hands of the

Franco-Mauritian minority and then might prove to be a hindrance to effective government by the majority Party or Coalition of Parties. After Mr Stonehouse's visit the clause was amended.

### *The Emergence of Political Parties*

The colonial regime, which favoured the Franco-Mauritians, was not in favour of political parties. But from 1936, and particularly after 1948, the Indian workers found a medium of expression in the Labour Party. Other groups of interest, notably the Franco-Mauritians, were obliged to form political parties. The various parties presented a number of common traits. On the one hand they had no real structure (except for the Labour Party), no status and no knowledge of the number of adherents or sympathisers. On the other hand, they tended to correspond to community or race.

### *The Labour Party*

The Mauritius Labour Party was created by a Coloured Creole, Dr Maurice Curé, in February 1936, after he was defeated in the elections of that year. Because of the restricted Constitution the working classes had no political rights and had lived all their lives under an oligarchical society. Emmanuel Anquetil, a Coloured Creole and Pandit Sahadeo, a Hindu, joined forces with Dr Curé; all three were determined to combat the existing political situation. The objects of the Labour Party were to give the labouring class the same rights, privileges and working conditions enjoyed by workers in other countries, as recommended by the International Labour Conference in Geneva.

The first newspaper of the Labour Party, *Le Peuple Mauricien*, was brought out in 1939, as a daily. Emmanuel Anquetil, a prolific journalist, wrote in English and also toured the island, addressing meetings, talking to the people and making them aware of their democratic rights. Dr Curé and Anquetil were responsible for the introduction of the Trade Union movement, which played an important part in post-war labour relations.

The members of the Party campaigned intensively for the introduction of social legislation and changes in the franchise to include workers' representation in the Council. However, the white planters, staggered at the audacity of these outrageous demands, dismissed them out of hand. Their attitude brought about the labour strike in August 1937 in the districts of Flacq and Grand Port, when five workers were shot dead. The strike forced the government to revise labour conditions and set up a Commission of Enquiry. The Commission condemned the abuses of the sugar planters and recommended the representation of the labourers in the Council, the granting of higher wages, the creation of the Labour Department and the legislation of Trade Unions. The Labour

Ordinance of 1938 legalised the formation of industrial associations which were a modified form of trade unionism.

However, before the proposals could be implemented the world was at war again and inflation rose so steeply that the workers were living at poverty level. This resulted in a second strike in 1943, in the north of the island, when three agricultural workers were killed by the police and many people injured. The leaders of the second strike were H.P. Ramnarain and Jugdambi and the result of the strike was that more food at reasonable prices was made available. It was thus made obvious that there was a good deal of profiteering by the unscrupulous rich.

When Dr Ramgoolam returned to Mauritius as a qualified doctor in 1935, he was already acquainted with socialism through the contacts he made in England. His work on the island took him among the working classes and the labourers on the sugar plantations in the rural areas. Soon after the 1937 strike he joined the Labour Party.

From 1941 Emmanuel Anquetil led the Labour Party and was later succeeded by Guy Rozemont, a brilliant man who came from a humble Creole family. The basic principle of the Party was that religion, communalism and social status were not to be made political issues. Rozemont was very successful in the elections of 1948.

In 1953 the Labour Party fought the election on the grounds of universal suffrage, responsible government, better opportunities for the illiterate, better examination schemes and reorganisation of the health service. Improved conditions for the workers and the abolition of customs duties on the vital foods of rice, maize, flour and cereals were included in its manifesto. Nationalisation of the major industries was also a part of it. Initially, nationalisation of anything was impossible because the Governor had the veto, but as they gained from experience the Labour Party realised that nationalisation could never be justified in Mauritius, a country primarily dependent on sugar, and desperate for diversification of the economy.

In 1959, with universal suffrage, the Labour Party included a number of Trade Unionists. Young intellectuals had joined the Party, infusing it with vigour and dynamism. The candidates were drawn from many professions.

After the death of Guy Rozemont, Dr Seewoosagar Ramgoolam took his place as leader of the Labour Party, which continued to flourish, although it did seem, after the 1959 elections and the alliance with MCA, that the Party was drifting towards communalism, casteism and sectarianism, and there were outbursts of anti-Labour propaganda.

However, in order to outwit the PMSD who were using caste as a campaign issue, Dr S. Ramgoolam nominated as candidates five rich members of the Ravived Group, only one of whom was successful. But in refusing the leader of the PMSD the post of Deputy Speaker, in 1963, Dr Ramgoolam and his colleagues created an atmosphere which

be the main instigators. According to a report in *Advance* dated 15th September, 1953 and headed "People in Chains" the final results of the election caused discontent: "Those who had some confidence in the impartiality find their hope has been shattered. The Governor has done the country a great disservice in the choice of nominated members . . . The Labour Party received a clear mandate from the electorate. The Governor has made the political domination of the upper classes secure for the time being".

### *The Election of 1959*

This was the first election fought with adult universal suffrage and single-member constituencies. The Labour Party's manifesto was based on self-government and social justice: a national health scheme, better education and improved social services, and better conditions of work. The Muslim Committee of Action had nothing further to add to the manifesto of the Labour Party: it did, however, support the Labour Party in constituencies which Muslims were not contesting. This support was extremely beneficial to the Labour Party in the north of the island, for it helped Ramgoolam to retain his seat in Triolet. The Independent Forward Bloc was a purely Hindu party, making a direct appeal to voters in the rural areas, the bulk of whom were agricultural workers. It had no ideology and its main objective was styled on the teachings of Pandit Bissoondoyal, who had spent long years in India during the time the Indians had campaigned to drive the British out of India. The Parti Mauricien, the main Opposition party, was strongly conservative and opposed to political innovations, whether they were decolonisation or liberalism. Its main campaign issue was to prevent Independence.

The results of this election were: The Labour Party gained 28 seats; The Muslim Committee of Action, which had more or less affiliated itself to the Labour Party, 5 seats; The Independent Forward Block, 6 seats; The Parti Mauricien, 3 seats, Independent candidates who were trade unionists, 2 seats.

Several important issues arose from this election. One was that R. Vaghjee, a Labour intellectual, lost his seat to a younger man who was fully cognisant of the needs of his constituents, although critics were quick to point out that Vaghjee was defeated because of the caste issue. A second important factor was that Gaetan Duval, a Creole lawyer, who later led the Parti Mauricien, gained a seat.

The number of voters was estimated at 277,550.

As a result of the Labour Party's overwhelming victory at this election, its leaders were in a strong position for future discussions and bargaining at the talks in London in 1961.

### *The Election of 1963*

This election gave Mauritius a semi-autonomous government. It was

fought on the issue of Independence as advocated by the Labour Party at the 1961 Conference, when the Parti Mauricien walked out before decisions were reached. Feelings were divided on the issues at stake and the results of the election showed this. Labour gained 19 seats (as against 23 at the last election); The Muslim Committee of Action, 4 (losing 1 seat); the Parti Mauricien, 8 (an increase of five seats) and the Independent Forward Bloc increased their seats from 6 to 7. The two independent candidates held their seats.

This reversal for the Labour Party was understandable, for the country was in a state of transition, moving towards Independence. Many voters, unfamiliar with party politics and world affairs, were a little fearful of the prospect of Independence and thus were swayed by the more literate of the population, who thought they might lose their wealth and power when Independence came. Many Creole voters, the majority of whom were scarcely literate and therefore easily led, were swayed by the talk of the Parti Mauricien. And the temporary withdrawal of Raymond Rault from the Labour Party together with the activities of others like Dr E. Millien and O. Lacage, did affect Labour's chances in the urban constituencies.

After discussions with London, an all-party government was formed, with Dr Ramgoolam as Chief Minister. Of the 14 Cabinet seats, six were allocated to the Labour Party, three to the Parti Mauricien, two to the Independent Forward Bloc, two to the Muslim Committee of Action and one to an Independent member. The Colonial Office had attempted, in this plural society, to allow the voices of all members of the community to be heard. Dr Ramgoolam became the Premier. Jules Koenig, leader of the Parti Mauricien was the new Attorney-General. The Speaker of the House was Ranchordas Vaghjee. The first Commissioner for the Mauritian Government in London was Dr Leckraj Teelock, who had pioneered family planning.

In this all-party government, a great show was made of concerted interests, but it was a superficial show. And on the 9th November, 1965, the all-party government had a set-back, when the Parti Mauricien withdrew its support over the selling of the Island of Diego Garcia to the Harold Wilson Government. From then on the Parti Mauricien launched its campaign against Independence, which it continued until the elections of August, 1967.

### *The Election of 1967 and the Coming of Independence*

Prior to the General Election of August, 1967, the three parties represented in the Mauritian Coalition Government merged into a single one under the name of the Independence Party, since all three advocated independence within the Commonwealth.

From the All Mauritius Hindu Congress an extreme nationalist party



been suspended as a result of support given by Radha Ramphul, the Permanent Representative of Mauritius at the United Nations, in an attempt to prevent the South African Foreign Minister from addressing the UN General Assembly.

On February 2nd, 1974, Ramgoolam announced that he himself would take over the post of Minister of Foreign Affairs. The Cabinet was reorganised to accommodate prominent members of the PMSD and IFB who had crossed the floor to join the Labour Party. The Labour and CAM Government was determined to maintain stability in the country, continue the fight against inflation and keep the development momentum going until the next election in 1976. The leader of the IFB declared that his party would not create difficulties for the Government in carrying out its policy for the social and economic benefits of the country.

### *The General Election of 1976*

In December, 1975 the Ramgoolam government took the momentous decision of extending the franchise to young persons of 18 years, to give the youth of Mauritius direct participation in the affairs of their country.

In June of 1976 the Organisation of African Unity Summit took place in Mauritius, when various heads of states assembled to discuss some of the pressing problems confronting emergent Africa. The Summit brought together a number of distinguished guests on the island. The Mauritian Prime Minister made history by becoming the first "non-African" to take over the chairmanship of the OAU from the retiring Chairman, Idi Amin of Uganda.

At about the same time Mrs Indira Gandhi and her son Sanjay paid an official visit to the island. This was highly successful and did much to cement the bond of friendship between India and Mauritius. Ostensibly she came to inaugurate the Mahatma Gandhi Institute, which had been financed exclusively by Indian capital and built by Indian and Mauritian technology.

The other event of major cultural interest was the hosting of the second Hindi Convention in August, 1976. The first had taken place in Nagpur, India when Ramgoolam chaired the Convention. This was held in the new Mahatma Gandhi Institute and attracted scholars from all over the world. Ramgoolam said that Hindi was the third most widely spoken language in the world and ought to be an official language at the UN.

Ramgoolam attended the meeting of the Non-Aligned nations at Colombo, where he repeated the pleas he had made at Lima the previous year, to make the Indian Ocean a zone of peace. He received strong support from the leaders of the countries who were concerned with development in that part of the Ocean, in Diego Garcia, where the

Pentagon was busy constructing a major military base.

The meeting of the Commonwealth Parliamentary Association was held in Mauritius in September, 1976 and attracted some lively Parliamentarians from Commonwealth countries. The problems of Southern Africa and the military build-up in the area around Diego Garcia were discussed. It gave an opportunity to the Mauritian delegation to show Mauritius' disapproval of the way the whole thing was handled by the British Government. It was indeed the Conservative Administration under Edward Heath which leased the island of Diego Garcia to the Americans, supposedly to counteract the Soviet interest in the Indian Ocean.

The MMM began to press for fresh elections. They had realised the significance of the arrival of about 200,000 new voters on the electoral register, and their own potential attraction to the young of the island drawn from various ethnic groups. They came to the conclusion that now or never was the time to prove the MMM capable of governing the country.

#### *The Dissolution of the Assembly*

The Mauritius House of Assembly was dissolved on 21st October, 1976, and on November 4th the Prime Minister announced that the first general elections since 1967 would be held on 20th December, 1976.

In his dissolution message, read by the Speaker, the Governor General, Sir Raman Osman, retraced the major events that had taken place since 1967, underlining the fact that 500 statutes were passed with 4,000 parliamentary questions asked and 50 private motions debated. He, too, like the Prime Minister, recalled the opening of a session of the Assembly by Her Majesty Queen Elizabeth II.

31 parties registered themselves for contesting the election. There were communal parties such as Muslim and Vaish; regional parties such as Parti du Sud, Nord and L'est; and "ginger group" parties such as Parti du Centre Republicain and People's Socialist Party. But the parties which really had some followers and were worthy of attention were: the Mauritius Labour Party under the charismatic leadership of Ramgoolam and the Comite d'Action Musulman (CAM) led by the enigmatic Sir Abdool Razack Mohamed. These two parties presented themselves under the banner of the Independence Party. The Mouvement Militant Mauricien (MMM), under the leadership of Paul Bérenger and the Parti Mauricien Social Democrate, led by Duval, challenged the Independence party grouping. The remaining two parties with some credibility were: the Independent Forward Bloc and the Union Démocratique Mauricienne.

The Independence Party presented a programme based on its record in office: the great social and economic transformation in Mauritian society since Independence. The MMM acknowledged the transition in

## ANNEX 96

Jean Houbert, "Mauritius: Independence and Dependence", *Journal of Modern African Studies*, Vol. 19.1 (1981), (extract)

# ***Mauritius: Independence and Dependence***

by JEAN HOUBERT\*

MAURITIUS became independent on 12 March 1968, and was then said to be the paradigm of the small isolated, poor, dependent country, only emerging from the colonial era to fall immediately into neo-colonialism – the Third World's Third World.

## A COLONIAL CREATION

Mauritius is very different from the newly independent countries of Africa and Asia in some important respects, having been entirely created by European colonisation. The economy, the society, the polity, the very flora and fauna of the island are all the direct result of its colonial history. The majority of the present-day inhabitants are the descendants of those who willingly and unwillingly arrived and stayed during the last two centuries, so Mauritius is not a 'settler colony' in the same sense as Australia. It is not a replica of the European 'mother country' beyond the seas, but rather a flotsam left behind by the wreck of the colonial world. In Mauritius, colonialism was not something which came from outside; it was built into the fabric of the whole society. What can be the significance of independence for such an ex-colony? What form does development take?

Profit brought the first immigrants to Mauritius and has dominated life ever since. Originally there was little or no money to be made out of an uninhabited small island, entirely lacking in natural resources, but it soon became part of a bigger scheme, whereby successive European powers – Holland, France, and finally Britain – used Mauritius as a watering place, and later a trading and military base *en route* to India.<sup>1</sup> Thereafter the island became – and remains – a sugar plantation, although in the last few years it has entered in earnest on the Hong Kong road of manufacturing for export.

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<sup>1</sup> For information about the arrival of the Europeans, see G. Visdelov-Guimbeau, *La Découverte des îles Mascareignes* (Port-Louis, 1948). On the historical background of Mauritius in the context of the Indian Ocean, see A. Toussaint, *Histoire des îles Mascareignes* (Paris, 1972), and *Histoire de l'Océan Indien* (Paris, 1961).

Sugar production cannot be explained by the possession of resources specific to the island or by initial factor endowment. Mauritius originally had none: it is in the cyclonic belt, and its small land surface was covered with tropical forests and volcanic boulders. It is thousands of miles away from the markets for raw sugar which is a heavy, bulky commodity.<sup>1</sup> The early European settlers appropriated the land and, since there were no native labourers, slaves had to be brought in from distant Africa and Madagascar to cut the forests and clear the plantations. Initially a variety of crops were grown, but these gradually gave way to sugar, which came to dominate the economy as the result of the place which Mauritius occupied in the overall imperial scheme.

Britain had captured the island for strategic reasons: to deprive the French of a base from which to harass her shipping and challenge her position in India.<sup>2</sup> With British hegemony in the Indian Ocean, Mauritius lost its military and commercial significance, and the settlers turned more and more to the land. A political partnership developed between the British officials and the French-speaking settlers, in which sugar provided the revenue needed to administer the island and maintain troops there. The colonial régime provided a minimum of infrastructure and the coercive apparatus for the plantation system. Slaves were brought in by the settlers with a certain amount of government control, and later, when this trade was abolished, cheap labour was introduced in the form of Indian indentured coolies.

Within the British Empire the Mauritian planters had a vast market for sugar. As the demand for this commodity grew, and as prices rose on the London market, the needs of the growing industry created an institutional structure: centralisation of mills, marketing, research, banking, and insurance, which through economies of scale reinforced the profitability of sugar compared with other forms of production in Mauritius.<sup>3</sup> This in turn led to more expansion, until practically the whole of the cultivable land of the island was under one crop.<sup>4</sup> By then

<sup>1</sup> Mauritius is in latitude 20° 15 S, longitude 57° 35 E, with an area of 1,865 sq. km, being 61 km long by 47 km, with 250 km of coast line. The island is of volcanic origin, fringed with coral reefs that create an extensive lagoon of 2,260 sq. km. A number of small islands, north and east, are parts of Mauritius, Rodrigues being the most important, 560 km to the east. The French *département* of Réunion is 150 km west of Mauritius, and the nearest land mass is Madagascar some 800 km to the west.

<sup>2</sup> On the British conquest of Mauritius, see Raymond M. D'Unienville, *Letters of Sir John Abercromby, September 1810–April 1811* (Port-Louis, 1969), and *The London Gazette Extraordinary* (London), 13 February 1811.

<sup>3</sup> See Roland Lamusse, 'The Economic Development of the Mauritius Sugar Industry', B.Litt. dissertation, University of Oxford, 1958.

<sup>4</sup> For an analysis of developments in the economy since World War II, see J. E. Meade et al. *The Economic and Social Structure of Mauritius* (London, 1961), and J. E. Meade, 'Mauritius: a case

sugar and its by-products represented 98 per cent of all exports from Mauritius. With the consequential displacement of other activities, the island had to import most of its requirements, including the bulk of its food.<sup>1</sup>

Mauritius as an entity then, through its very genesis, was doubly dependent on the outside world: for all its exports, and almost all its imports. Changes in the price of the latter, despite the small quantities involved, could seriously affect standards of living. Of vital importance was the quantity and price of the sugar sold on the world market, and Mauritius had only partial control over this. Furthermore, both imports and exports were subjected to variations in the cost of long-distance freight, as well as the external money market, over which Mauritius had little influence. An extreme international specialisation within the colonial empire has produced a vulnerable, fragile economy. But because this operates only on a cash basis – there are no subsistence farmers – with a relatively high G.N.P. *per capita*, as well as universal literacy, the island does not have the same features of underdevelopment that are to be found in so many other areas of the Third World.

Capitalism in Mauritius took root right from the start for the simple reason that there was nothing else previously, so the problem of articulation with pre-capitalist modes of production, posed elsewhere in the colonial world of Africa and Asia, did not arise in Mauritius.<sup>2</sup> Here capitalism, in its colonial variant, found virtually a clean slate, although it did not, and could not, replicate capitalist development in Europe. In Mauritius the economy grew as part of the overall colonial empire, the centre of which was in Europe. In fact, it is not correct to think of the island as a self-contained entity, since important outside

study in Malthusian economics', in *Economic Journal* (London), LXXI, September 1961, pp. 521–34. For a critique of Meade's position, see John King, 'Mauritius, Malthus and Professor Meade', Communications Series No. 49, Institute of Development Studies, University of Sussex, Brighton, 1970.

<sup>1</sup> Currently 80,000 tons of rice and 50,000 tons of wheat flour, meat, and milk are being imported. Mauritius is now producing sufficient potatoes and poultry for local consumption, but the seeds and feed have to be obtained from South Africa. Some efforts have been made to improve the home supply of fish, but meanwhile, Japanese, Taiwan, and South Korean fleets exploit the resources around the island. *Financial Times* (London), Special Survey on Mauritius, 6 December 1979.

<sup>2</sup> The articulation of capitalist and pre-capitalist modes of production in Africa is discussed by Pierre-Philippe Rey, *Les Alliances de classes* (Paris, 1978). Slavery was, at first, the most expeditious way for capitalism to secure sufficient labour power to develop this almost uninhabited island. As Marx has argued, 'capitalism does not entirely rule out the possibility of the existence of slavery at isolated points within the bourgeois production system. But this is only possible because it does not exist at other points of the system and appears as an anomaly in opposition to the bourgeois system itself'; quoted by M. C. Howard and J. C. King (eds.), *The Economics of Marx* (London, 1976), p. 87. For a thorough analysis of sugar plantations and slavery, see Eric Williams, *Capitalism and Slavery* (London, 1964).

socio-economic and political forces penetrated into – and, indeed, became part of – the colonial body of Mauritius. This fundamental dependency was highlighted in the politics of independence by ethnic tensions and the problem of unemployment.

*Indians in the Creole Society*

From the time that sugar began to be grown on a large scale it has determined the peopling of Mauritius. The number of slaves increased with the need for workers on the plantations, and when abolition took place the demand had become insatiable with rising sugar prices and high profits, but by then cheap indentured labour from India was providing a more lucrative form of exploitation for the planters, as well as being more acceptable to the British. The Indians brought a radical and permanent change in the ethnic composition of the island: in 1835 they formed a tiny fraction of the population of 100,000, of whom 80,000 were slaves, but by 1861 they represented two-thirds of all the inhabitants, and this proportion has been maintained to the present day. A total of 450,000 Indians came to Mauritius as indentured labourers, and most stayed.

When the Indians arrived the three-tier colonial creole society was well established in Mauritius. The British on taking the island in 1810 had found a small number of whites of French origin at the top, large numbers of black slaves at the bottom, and an intermediate group – in size as well as colour – in the middle. The colonial administrators kept and strengthened that pyramidal-type of structure, grafting themselves on at the apex. When slavery was abolished, the indentured Indians replaced the slaves on the plantations and moved to the bottom of the creole hierarchy.

Within this rigid social structure some mobility was nevertheless possible through the acquisition of land. The growing of sugar in Mauritius is a seasonal activity, and in time the planters discovered that it was more economical to employ labourers on a daily basis via a contractor, rather than keeping them tied to the plantations all the year round. The contractor was usually an 'old immigrant' Indian who could speak creole and one or more Indian languages, and he received an agreed sum for a given number of labourers where and when required. The contractor was thus in a strategic position to draw to himself part of the surplus produced by the labour power of his men, and with the capital thus accumulated he bought land from the planters.

Sugar milling has always been more profitable than growing sugar. The white planters would sometimes, in bad years, decide to sell or lease part of their land in plots to Indians, but only on the understanding that they would grow sugar and bring the cane to their mills. The Indians, using family labour, were able to produce sugar on marginal land which had become uneconomical for the planters when prices fell. Planters might also give their favourite *sirdar* – a kind of field foreman – small inferior plots of land for market gardening and hence extra cash. Thus, gradually, by hard work and saving, with favours from the planters, and through the exploitation of their fellow countrymen, a number of Indians amassed money and bought land. A few acquired great prosperity as large and rich sugar-estate owners in their own right, while many others became ‘small planters’, owning anything from less than one to several hundred acres of cane.

Just under half the cultivated land of Mauritius is owned today by Indians.<sup>1</sup> Increasingly, in recent years, the sons of many of these planters have moved up the educational ladder into the public services and the professions, while more and more have entered politics. Thus, slowly at first, but much more rapidly since World War II, a sizeable Indian middle stratum has emerged, closely linked with the sugar industry, but now helping to mitigate the class confrontation of the white millers/planters and the Indian sugar proletariat.

#### THE POLITICS OF INDEPENDENCE

There are only a few examples where an indigenous society has been able to liberate itself from the domination of a foreign power and its local agents, and Mauritius could hardly be one of them. Here ‘decolonisation’ was merely a rearrangement of the internal balance of political power, and the colonial government played a major rôle in ensuring that there would be continuity in the internal structure of the society, as well as the external linkages. Hence the explanation for the leisurely pace set by the British, because although electoral and constitutional reforms started in 1948, the island did not become independent until 1968.

Internal pressures for change had taken a class basis at first. A number of creole artisans and intellectuals had joined with a few Indian professionals to press for constitutional reforms, and for the right to

<sup>1</sup> For the division of sugar plantations into plots and their sale to Indians, see H. C. Brookfield, ‘Problems of Monoculture and Diversification in a Sugar Island: Mauritius’, in *Economic Geography* (Worcester, Mass.), 35, 1959, pp. 25–40.



strike and form trade unions. They started the Mauritius Labour Party on a non-ethnic basis just before World War II. The birth of the M.L.P. coincided with unrest on some of the estates, provoked by a conflict over the quantity of sugar accruing to the 'small planters' for the canes they brought to the millers/planters. After the extension of the suffrage in 1948, ethnic considerations began to dominate Mauritian politics, and the leadership of the M.L.P. passed into the hands of Indians.<sup>1</sup> Their kith and kin, although largely 'creolised', have retained enough 'Indianness' to make it possible for them to be mobilised politically on an ethnic basis. Rich Indian planters, civil servants, and the sugar proletariat could be rallied together to provide a large electoral base for the 'moderate' Indian leaders of the M.L.P. who were being groomed by the Colonial Office to take over at independence.

By way of contrast, a kind of franco-Mauritian nationalism emerged, especially during periods of strain in the colonial partnership between the British administration and the white French-speaking owners of the sugar industry, and this had the effect of strengthening the attachment of all categories of creoles to the French language, and even to demands for the island to be returned to France.<sup>2</sup> But the nationalism of the creoles could never go very far because the interests of the sugar plantocracy were so closely tied with the British Empire. The French-speaking planters protested now and again, but on the whole they were not too dissatisfied with an arrangement which guaranteed their privileges, their supply of labour, and a market for their sugar, without interfering unduly with their cultural and sentimental attachment to France. Large numbers of coloured creoles had their interests tied to their jobs in the civil service, and however francophile they remained they could not afford to be too anti-British. For many years creole 'reactionaries' and 'liberals' were divided more virulently over questions of colour and voting rights than the constitutional status of the island. Moreover, to the extent that creole nationalism aimed at reintegration with France, rather than independence for Mauritius, it alienated the majority of the population which by then was Indian.

With the advent of even limited constitutional and electoral reforms, the white sugar barons could see political power slipping to the descendants of 'their' indentured labourers, and so they looked for and

<sup>1</sup> A consultative committee on the revision of the constitution under the chairmanship of the Governor of Mauritius, Donald Kennedy, held several meetings in 1946 and 1947, during which questions of ethnicity were debated at length. This led to an exchange of correspondence with the Secretary of State for the Colonies, Arthur Creech-Jones, and to the extension of the suffrage. See *Revision of the Constitution of Mauritius* (London, 1947), Cmd. 7228. The text of the 1947 constitution is to be found in D. Napal, *Les Constitutions de l'île Maurice* (Port-Louis, 1962), pp. 110-27.

<sup>2</sup> 'Le Retour de l'île Maurice à la France', Documents publiés par la délégation mauricienne, Paris, 1919; also J. Rivière, *L'île Maurice à la France* (Paris, 1920).

found political allies on an ethnic basis. The coloured creoles were traditionally intermediaries, not only between the white owners and the Indian sugar proletariat, but also in the civil service between the British administrators and the public at large. With the rise of the Indian middle-class they felt that they were being squeezed out of government employment, and had a number of real grudges which could easily be activated politically. The ex-African slaves, displaced from the plantations with the coming of the Indians, had moved to the coast and to the towns. They earned a meagre living by fishing in the lagoons with primitive equipment, and by working as stevedors, drivers, and artisans. Many were more-or-less permanently unemployed and formed a *lumpenproletariat* on the margin of the sugar economy. Most of the creoles, the rich white mill-owners, the middle-class coloured civil servants and professionals, and the black unemployed were Roman Catholics. In spite of their colour/social conflicts, and the growing class gulf between them, they all in their different ways felt threatened by the Indians, and responded readily to an ethnic political appeal.

The creoles also gained political support from other minority groups. They were joined naturally by the Chinese shop and restaurant-keepers who had emerged as middle-class Roman Catholics.<sup>1</sup> In addition, the creoles found allies among the Muslim minority, some of whom had taken the lead in establishing religious and cultural institutions that helped maintain a sense of communal identity among Muslim labourers, thus keeping them apart from the Hindus.<sup>2</sup>

Thus the constitutional reforms, helped by the colonial administration, gave rise to two large ethnic alliances: one dominated by the white creole plantocracy, the other by the high 'caste' of rich Indian planters and professionals. Both cut across deep divisions of class interests, although the stress on ethnicity served to camouflage various internal differences. The contest fought by these two alliances over the issue of independence gave rise to a good deal of ethnic strain and some violence, but did not bring into question the foundation of the colonial society based on class exploitation. The leaders on both sides had nothing to gain by radical changes, and all of them wanted to keep Mauritius linked with Britain and Europe.

The *Parti mauricien social démocrate*, backed by the creoles, advocated a form of integration with Britain, while the Mauritius Labour Party,

<sup>1</sup> The Chinese came to Mauritius during the late nineteenth century as labourers, but rapidly moved into retail trading where they gained a virtual monopoly. In recent years they have entered the professions, while retaining a strong position in commerce; well 'creolised' they now identify themselves fully with Mauritius. See M. Ly-Tio-Fane, 'The Chinese in Mauritius', n.d.

<sup>2</sup> Cf. Moomtaz Emrith, *The Muslims in Mauritius* (Port-Louis, 1967), and for an anthropological analysis, see Burton Benedict, *Indians in a Plural Society* (London, 1961).

prompted by London, opted for independence. The impending accession of Britain to the European Economic Community loomed large in the preoccupation of both parties. Integration with Britain was presented by the P.M.S.D. as a formula for curing all the ailments of Mauritius, and there is no doubt that they were heavily influenced by the status of nearby Réunion. The creole leaders argued that by integration/association with Britain, Mauritian sugar would continue to enter the United Kingdom without contravening the Treaty of Rome, and that inside the Common Market there would be a large assured market, as well as high European prices. Moreover, Mauritians with British passports would be able to find work in Europe: the close links with beloved France could be renewed at last, and the 'Hindu Menace' would vanish.<sup>1</sup>

The M.L.P. argued that integration with Britain was not feasible, and that in any case Mauritius would continue to benefit from the Commonwealth Sugar Agreement even if Britain joined the E.E.C. Furthermore, an independent Mauritius would be better placed to make its own arrangements with Europe – and, in particular, with France – while retaining its close relations with Britain.<sup>2</sup>

The strategy of the P.M.S.D. was to press for a referendum to be held in Mauritius on the straight issue of independence versus association, and at the same time to make a general appeal to all Mauritians, irrespective of communities, to reject independence. The party conducted a skilful campaign, ably led by a young populist leader, Gaëtan Duval, and 'Hindu mon Frère' became the slogan on island platforms, if not in the intimacy of creole clubs and drawing rooms. The enormous resources of the sugar industry helped the P.M.S.D. to draw large numbers of Indians – particularly the young – to its ranks.

It is most improbable, however, that London would have agreed to the plans of the P.M.S.D. whatever the wishes of the inhabitants.<sup>3</sup>

<sup>1</sup> The P.M.S.D. was originally known as *Le Parti mauricien*, but *social démocrate* was later added, mainly to impress the British Labour Government, and a long document tried to establish its credentials as a social democratic party (Port-Louis, n.d.). The early P.M. had the reputation of being anti-Hindu, and members of the M.L.P. later embarrassed the leaders of the P.M.S.D. by reminding them of the days when 'Malbar nous pas oulé' had been their slogan; *Legislative Assembly Debates*, 23 March 1965.

<sup>2</sup> The revised *Constitution of the Mauritius Labour Party* (Port-Louis, 1957), reaffirmed the socialist principles of the party. The ten years (1957–67) of internal self-government under the M.L.P. leading to independence are reviewed in a special edition of *Inforama* (Port-Louis), 1967, 'Dix Années de réalisations'. The positions of the P.M.S.D. and the M.L.P. on the issue of independence were brought out clearly in a debate between Gaëtan Duval and K. Jagatsingh in *L'Express* (Port-Louis), 31 December 1966.

<sup>3</sup> The Prime Minister, Seewoosagur Ramgoolam, stated that although he himself had been prepared to advocate integration, 'we are told there is not the slightest chance of this country being integrated with Great Britain... Great Britain has no time for us. It is painful for me to

Mauritius was a most unlikely part of the British Empire to be made part of the United Kingdom: apart from an absence of any 'kith and kin' there, the creole élite had made many of the British administrators feel alien in their own Crown Colony. The island, moreover, had problems of over-population and unemployment which the P.M.S.D. proposed to solve by emigration, the very opposite of the British policy of restricting the growing influx of coloured people. The price of sugar was also at an all-time low, and London did not relish the prospect of having to subsidise Mauritius.<sup>1</sup> Besides, formal colonial attachments, of any kind, were no longer suited to the contemporary world. Having begun to make the necessary internal arrangements for the creation of a neo-colonial régime, Britain was anxious to get out,<sup>2</sup> but characteristically 'played the Mauritians along' in order to maintain a central interest in the area.

From the early 1960s onwards an Anglo-American team of experts had been surveying the small islands in the Indian Ocean for a suitable site for one or more military bases. A decision was taken to build an airport with a runway capable of handling the largest civilian and military aircraft on Mahe, the main island of the Seychelles, which would also promote long-distance international tourism in order to reduce the local recurrent burden on the British Treasury.<sup>3</sup> The military part of the airport project was later abandoned when the United States insisted that Mahe was much too heavily populated to serve as a secure and effective oceanic base, especially as even a small but unfriendly government could disrupt plans and raise problems at the United Nations. The search continued, and at one point Aldabra was considered, but this raised an outcry by the world's scientific community on account of its rare fauna. Farquhar and Desroches suited the British who wanted more easily to monitor sanctions against shipping to Rhodesia via Portuguese Mozambique, but these islands were too far to the west for the Americans.

Finally, the planners settled on Diego Garcia in the Chagos archipelago

stand in this House and say so, because I am a loyal citizen of the British Empire. I owe my fidelity and loyalty to this great Empire, even if it has not discharged its duties towards the common people of this country'. *Mauritius Legislative Council Debates*, 13 June 1967, cols. 791-2.

<sup>1</sup> *The Times* (London), 23 January 1968. Also J. de Saint-Jorre, 'An Impoverished Independence', in *Round Table* (London), April 1968, pp. 217-19.

<sup>2</sup> *The Manchester Guardian* (London), 1 February 1965.

<sup>3</sup> A preliminary survey had been made in 1958, and in 1961 a joint report established the basis for the necessary decisions to be taken whereby the United States was to finance half of the £10 million project. Later, in 1965, when Mahe had been abandoned, three of the small island groups of the Seychelles were detached and joined to the Chagos to form B.I.O.T., the British arguing that this was the 'price' the Seychelles had agreed to pay for the airport. *Seychelles Bulletin* (Mahe), 19 March 1976.

where a splendid atoll, capable of being transformed into a safe haven for a large fleet of surface ships and submarines, was most conveniently located in the middle of the Indian Ocean.<sup>1</sup> There were two problems, however: the Chagos belonged to Mauritius, and they were inhabited. The British Government initially considered buying the islands and treating them almost as ships of the Royal Navy, but abandoned the idea for financial and legal reasons.<sup>2</sup> Instead it was decided to amputate the archipelago as part of the independence deal for Mauritius, and to establish, five years after United Nations Resolution 1514, a new colony, the so-called British Indian Ocean Territories (B.I.O.T.).<sup>3</sup>

The strategy of the British delegation at the Lancaster House Conference of 1965 was to lead the Mauritians to think that London was willing to consider seriously the option of integration/association proposed by the P.M.S.D. as an alternative to independence, and would be prepared to test opinion through a referendum as requested by the creole party.<sup>4</sup> The M.L.P. felt that were it to raise difficulties about the detachment of the Chagos islands, or to insist on too high a price for them, the British Government might lean to the side of the P.M.S.D. and grant its request for a referendum.<sup>5</sup> Since opinion in Mauritius showed signs of favouring association there was a real risk, from the M.L.P. point of view, of losing the prize of independence at the last moment, and this was a gamble that the Indian leaders were not prepared to take. So for the relatively small sum of £3 million, once and for all,<sup>6</sup> the M.L.P. agreed not to object to either the amputation of the islands or to their depopulation.<sup>7</sup>

<sup>1</sup> The three island groups of Farquhar, Desroches, and Aldabra, amputated from the Seychelles at the same time as the Chagos were detached from Mauritius, were returned to the sovereignty of Mahe as part of an agreement designed to boost the image of Jimmy Mancham, the British-groomed President, and to make him accept independence. The United States was involved because of their military tracking station on Mahe, and because of their insistence that these islands should not be made available to other powers for military purposes. *The People* (Mahe), 27 March 1974, and *Le Monde* (Paris), 25–28 May 1976. <sup>2</sup> *The Observer* (London), 1 August 1965.

<sup>3</sup> An indication of how strongly the British Government felt about setting up this base is given by the fact that it went ahead in spite of repeated objections from several Commonwealth countries. See *The Hindu* (New Delhi), 17 January, 27 April, 19 and 20 November 1965 for India's objections, and *Dawn* (Karachi), 20 March and 29 May 1965, for Pakistan. Two U.N. resolutions also expressed deep concern over the project; *The Times*, 17 July 1965, and *Le Monde*, 28 November 1965. <sup>4</sup> *The Times*, 6 and 22 October 1965. <sup>5</sup> *The Guardian*, 6 and 8 October 1965.

<sup>6</sup> *The Times*, 13 November and 7 December 1965. Answering a parliamentary question about Diego Garcia on 14 December 1965, M. G. Forget, then the second most important member of the Government, said 'In discussions of this kind, which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation'; *Mauritius Legislative Assembly*, col. 1774.

<sup>7</sup> The Diego Garcia question has resurfaced in Mauritian and international politics from time to time. During 1980, with the help of an expert from the British Ministry of Defence, the map showing the territories forming part of Mauritius was redrawn, leaving out the Chagos archipelago. An opposition amendment in the Legislative Assembly to include the islands was

The British Government then proceeded to deport to Mauritius, without their consent, the 1,400 inhabitants of the Chagos who had been there for several generations, and thereafter secured a rebate of some \$14 million on Polaris missiles bought from the United States. In 1972 the British gave a further £650,000 to the Government of Mauritius,<sup>1</sup> while the Americans, at a cost of over \$175 million, transformed Diego Garcia into their principal military base in the Indian Ocean. The very long runway of 4,000 metres can handle the giant B52s as well as a squadron of P3C observation planes, and this enables the United States to do without a carrier force permanently in the Indian Ocean. Storage facilities for Polaris and Posidon on the atoll enable nuclear submarines to double their stay in the area, and the communications station increases the target accuracy of their missiles. There is no doubt that these British/Mauritian/American arrangements have caused Diego Garcia to become the 'Okinawa and Malta' of the Indian Ocean,<sup>2</sup> thereby quickening an arms race and the further militarisation of this part of the world, much to the detriment and dislike of the inhabitants.<sup>3</sup>

rejected, the Minister for Foreign Affairs arguing that 'Diego is legally British. There is no getting away from it. This is a fact that cannot be denied. No amount of red ink can make it become blue. In any case, I am not in a hurry to see the Americans go'. *Le Mauricien*, 27 June 1980.

However, with mounting pressure inside the M.L.P., as well as from the O.A.U. – where a motion by Madagascar demanding that Chagos be returned to Mauritius was carried unanimously at the Freetown Summit on 4 July 1980 – Ramgoolam went to see the British Prime Minister. But all he got from London was a vague promise that the islands would be returned to Mauritius 'when they are no longer needed for defence purposes'. *Ibid.* 13 June and 8 July 1980, and *L'Express*, 17 July 1980.

When the Minister of Foreign Affairs returned from Freetown and London, he tried to put this 'polite refusal' (so described by another Minister) in as favourable a light as possible for the Government by going back on what he had said the previous month, and by offering the following interpretation: 'Diego belongs to Mauritius; there is no disagreement about that... L'Île est a l'île Maurice; l'usufruct est a la Grande-Bretagne'. *Le Mauricien*, 10 July 1980. But he was contradicted by the Prime Minister who, according to *L'Express*, 17 July 1980, stated on his return that 'Great Britain has sovereignty on Diego'.

<sup>1</sup> According to *Le Mauricien*, 22 January 1980, the British Government has been trying through a private lawyer to persuade the deported islanders, now well organised and politicised, but mainly unemployed in Mauritius, to drop all claims to their 'homeland' in exchange for a further payment of £1.2 million.

<sup>2</sup> The overthrow of the Shah's régime and the Gulf war between Iran and Iraq has further enhanced the strategic importance of Diego Garcia: the eight helicopters which attempted to rescue the American hostages in Iran were based there, and more recently the stockpile of equipment and arms for the newly created United States Rapid Deployment Force. See *Le Point* (Paris), 12 June 1980, p. 88, and the *Sydney Morning Herald*, 21 June 1980.

<sup>3</sup> The following sources have been used for the Diego Garcia question and the rôle of Mauritius: *The Times*, 8 and 9 November 1965, *The Guardian*, 10 September 1975, *The New York Times*, 22 September 1973, *The Sunday Times*, 21 September 1975, *The Hindu*, 20 November 1965, *Le Monde*, 13 March 1976, and the local press in Mauritius during this period. Also interviews at the 1965 Constitutional Conference with several of the Mauritian delegates and their Constitutional Adviser, Professor S. A. De Smith, as well as Government Ministers in Mauritius and the Seychelles.

Gaëtan Duval, the leader of the P.M.S.D., published his version of what happened in *Une Certaine idée de l'île Maurice* (Port-Louis, 1976), and Sir Secwoosagur Ramgoolam gave an interview

Having secured the Chagos archipelago from the M.L.P. the British then turned down the P.M.S.D. request for a referendum on association by deciding that 'it was right for Mauritius to become independent and take her place among the sovereign nations of the world'.<sup>1</sup> Britain would make a defence agreement with Mauritius on independence in order to look after the island's external and internal security,<sup>2</sup> and a number of key officials would remain, including the head of the civil service, the security advisers to the Prime Minister, and the commander of the special mobile force. Thus Britain would continue to nurse the fledgling state through the early years of independence. But however important this continuing British presence, it could only buttress not perpetuate the colonial society, since this was more a function of the existing internal economic, social, and political structures, themselves weakened by excessive external dependency.

London having made these decisions had to do all it could to ensure that the M.L.P. stayed in power in Mauritius. The scheduled general election was delayed as long as possible in the hope that opinion would swing back towards the pro-independence parties.<sup>3</sup> Provisions for communal representation were written into the electoral system principally to satisfy an avowed communalist ally of the M.L.P.,<sup>4</sup> the Muslim Committee of Action. Following British advice, the M.L.P. merged with

on the Diego Garcia question to *Le Monde*, 13 March 1976. For a wealth of information on life in the Chagos, see R. Scott, *Limouria: the lesser dependencies of Mauritius* (London, 1961). This ex-colonial Governor of Mauritius shows the weakness of the official British argument – once the Diego Garcia removals had been reported – that the islanders were only temporary resident employees of a Seychelles copra company.

<sup>1</sup> *Mauritius Constitutional Conference, 1965. Report by the Chairman Mr A. Greenwood* (London, 1965), Cmnd. 2797, p. 77: 'the main effect of the referendum would be to prolong the current uncertainty and political controversy in a way which could only harden and deepen communal divisions and rivalries... and would not be in the best interests of Mauritius'. See also *The Times*, 25 September 1965.

<sup>2</sup> *Agreement on Mutual Defence and Assistance* (London, 1968). Cmnd. 3629, p. 2. The Agreement was to continue in force for six years, but the British decided not to renew it much to the chagrin of the Mauritian Prime Minister who had always been very keen to tie the island to British strategic development in the region. Ramgoolam had already given a guarantee back in 1961 that 'an independent Mauritius would not follow a neutralist policy which would remove it from areas of British strategic defence', O.F.N.S., 26 June 1961. *Exchange of Letters for the Provision of Assistance or Advice in Connection with Staffing, Administration and Training of the Police Forces of Mauritius*, Treaty Series No. 3 (Port-Louis, 1968).

<sup>3</sup> *Daily Telegraph*, 26 April 1967, and *Financial Times* (London), 4 August 1967.

<sup>4</sup> The report of the Electoral Commission led by G. H. Banwell was badly received by the Prime Minister, mainly because it made little allowance for ethnic representation; *Legislative Assembly Debates*, 7 June 1966. In fact, Ramgoolam was keeping his part of the bargain for the support he had received from C.A.M. at the Lancaster House Conference. Whereupon John Stonehouse was dispatched to Mauritius, where he supported changes that satisfied the M.L.P. and its ally, but the price paid has been to entrench communalism in the constitution of independent Mauritius. See *Report of the Banwell Commission* (London, 1966), Cmnd. 362, and *The Mauritius Independence Order, 1968* (London, 1968).

the C.A.M. and the Independent Forward Block, a pro-independence party which had been in the forefront of the Indian struggle, supported by sections of the sugar proletariat, to fight the elections as a single organisation against the P.M.S.D.<sup>1</sup> Even so the results were close: with a heavy poll, the independence coalition obtained 54 per cent of the votes cast, against 44 per cent for the P.M.S.D. But the electoral system and party alliances translated this into 23 seats for the creole-dominated P.M.S.D., only one seat less than the 24 for the M.L.P., although C.A.M. and I.F.B. secured a further 15 seats. The P.M.S.D. won all the urban constituencies, while the M.L.P. got most of its support from the rural areas.

Independence was not a day of universal rejoicing in Mauritius. British soldiers patrolled the streets, and British warships stood by outside, while the Union Jack was lowered to mark symbolically the end of colonial rule, but at midday instead of the traditional midnight through fear of violence.<sup>2</sup> As the P.M.S.D. controlled the towns and boycotted the ceremonies, the flag of the new state was not flown in the urban areas.<sup>3</sup> The coloured middle class sulked for a time, and a few even emigrated to Australia; the poor black creoles and a number of Muslims vented their frustration in a short but murderous bout of communal violence in the capital, Port-Louis, just before independence.<sup>4</sup>

But the plantocracy soon realised that independence had not after all changed much in the colonial society. The new holders of political power were as keen as the British had been to foster the interests of the sugar industry, not least because of the growing revenue needed by the Government. The Indo-Mauritian middle class, with its own sugar interests, has proved to be as staunch a defender of private property as its creole counterpart. The cordial partnership between the so-called 'private and public sectors' has been strengthened and, indeed, politically sealed when the M.L.P. discarded its erstwhile ally of the

<sup>1</sup> According to *The Sunday Telegraph* (London), 10 March 1968, the British Labour Party loaned 'a chubby bearded gentleman' to the M.L.P. to help organise the election campaign, namely Donald Ford.

<sup>2</sup> The Queen was to have been represented at the ceremony by Princess Alexandra, but her visit was cancelled for fear of further disturbances. Actually there was no violence then, although tension was high; *New York Times*, 13 March 1968.

<sup>3</sup> *Ibid.* 16 March 1968. In fact it was several months before the new flag was flown widely in Mauritius, and only after a year in Rodrigues.

<sup>4</sup> There had been a first wave of violence between creoles and Indians, the two main communal contestants over the independence issue in 1965, precipitated by the visit of A. Greenwood; *The Times*, 12 and 14 May 1965. What was strange about the violence of 1968 was that it was between creoles and Muslims, the two ethnic groups which had opposed independence, that it remained localised in a suburb of the capital, and that it occurred after the elections but before independence. Whatever the cause, one of the consequences was that the Muslims withdrew their support for a time for the P.M.S.D. *Ibid.* 22, 25, and 26 January 1968.



independence battle, the I.F.B., and joined with the P.M.S.D. to form a coalition government 'of national unity' which has lasted, on and off, to the present day.<sup>1</sup>

#### THE EUROPEAN ECONOMIC COMMUNITY AND ECONOMIC GROWTH

Both parties during the battle over independence had been preoccupied by the need to secure markets for sugar. The P.M.S.D. proposal for integration with Britain had been largely motivated by fears that the Commonwealth Sugar Agreement – under which Mauritius got an assured marked and guaranteed price, normally above the open-market level, for just over half (400,000 tons) of its yearly production of sugar – would come to an end if, and when, Britain became a member of the European Economic Community.<sup>2</sup> The advantage of the C.S. Agreement to Mauritius was that it sheltered the sugar industry from the worst fluctuations on the world market where, during the mid-1960s, a glut of sugar had brought prices down even below the cost of production.

After independence, Mauritius looked for reassurance in the direction of the European Common Market, where France – a large producer of sugar beet, and the European country perhaps most anxious to maintain its presence in the Third World – would have a major voice in deciding the fortunes of Mauritian sugar when Britain entered the Community. Paris had been a little anxious at first lest the new régime at independence for Mauritius should be hostile to the policy of *départementalisation* in Réunion. On the other hand, with the end of the British colonial era there would be more opportunities for the French presence to be reasserted in a receptive island.<sup>3</sup> Michel Debré, Deputy for Réunion, ex-Prime Minister of General de Gaulle and the most influential of the Gaullist 'barons', was only too willing to help the

<sup>1</sup> After the elections, Ramgoolam had extended 'Whole-hearted support and cooperation to the private sector... [I] trust that the rate of local and foreign investment will increase and that the private sector will make its full contribution towards a concentrated, national effort'; *Legislative Assembly Debates*, 22 August 1967.

<sup>2</sup> In the year before independence, Ramgoolam had introduced a motion in the Legislative Assembly designed to emphasise 'the vital necessity of protecting Mauritian sugar' in any negotiations for British entry into the E.E.C. Mauritius, he had stressed, 'will continue to grow as much sugar as possible. Sugar is our lifeblood... The C.S.A. is vital for us'. In the same debate the Prime Minister stated that he fully subscribed to the view of General de Gaulle that 'France should have a responsibility towards all the French-speaking countries of French culture [sic]'; indeed, stealing a leaf from the P.M.S.D., he added, 'because here is a country to which France has contributed so much, and I do not think France can now say that all of a sudden she had absolved herself from all her responsibilities'. *Legislative Assembly Debates*, 13 June 1967, p. 791.

<sup>3</sup> *Le Monde*, 10 August 1967.

formation of a coalition government between francophile representatives of sugar and the Labour Party in Mauritius, and its creation was celebrated with much more general rejoicing than had been witnessed at the time of independence.

France rapidly became one of the principal aid donors to Mauritius. Its Embassy, with a large cultural section, began to send advisers to a number of Ministries and technical specialists to the remotest villages. Radio and television programmes from Paris are now relayed by satellite and boosted to Mauritius by powerful stations in Réunion. France provides help to the schools and the University of Mauritius, while the number of scholarships has been significantly increased.<sup>1</sup> French artists, plays, and films for Réunion take in Mauritius in their tours. Ministers have been received in Paris on official occasions with the honours usually reserved for African Presidents.

Mauritius has been made a full member of several international French-speaking organisations.<sup>2</sup> Paris made an imaginative innovation by handling relations with Mauritius through the Department of Co-operation, thereby enabling the island to have the same advantages as former French colonies. With the advice and backing of Paris, Mauritius became a member first of the *Organisation commune africaine et malagache*,<sup>3</sup> and later in record time, with the support of the French-speaking African states, of the *États associés malagaches et africains*.<sup>4</sup>

In fact, Mauritius became the first member of the Commonwealth to be associated with the E.E.C. before Britain joined the Common Market, and so benefited from loans on favourable terms from the

<sup>1</sup> French scholarship funds went up from 7 to 27 million francs in 1973. See R. Benezra, 'L'île Maurice: sept ans d'indépendance', in *Afrique contemporaine* (Paris), 84, March 1976.

<sup>2</sup> When the *Association internationale des parlementaires de langue française* met in Mauritius in 1975 M Debré said: 'Le français en tant que culture n'appartient pas à la France; elle est une responsabilité commune'. Answering questions by the press, the French leader said that although Mauritius represented economic and political stability in the region she needed friends, and France was in the front rank of her friends; *L'Express*, 16 and 21 September 1975. Later that year, Mauritius was host to the 28 French-speaking members of the Agence de coopération culturelle et technique; *Le Monde*, 28 November 1975. Since then Ramgoolam has expressed the wish of seeing a Commonwealth *à la française* created; *Advance* (Mauritius), 26 April 1977.

<sup>3</sup> For Mauritius, membership of O.C.A.M. was part of the strategy of getting close to France and Europe bearing in mind the forthcoming British negotiations with the E.E.C. For France the aim was to get a new member at a time when O.C.A.M. was in bad health - shortly after the meeting of this French-sponsored organisation in Mauritius in May 1973, where only the faithful Senghor, Bongo, and Bokassa turned up, Madagascar withdrew, as well as Chad and Cameroun. The adhesion of Mauritius was particularly useful for France: since Réunion is treated as a part of the metropole, a clear distinction must be maintained between Africa and the islands of the Indian Ocean. Hence the 'M' in O.C.A.M., for if the islands are regarded, as they are by the Organisation of African Unity, as part of the continent, then the Réunion policy of France is challenged.

<sup>4</sup> *L'Express*, 1 June 1973.

European Development Bank, as well as drawing rights on the European Fund for Development. Under the Yaoundé II Convention, Mauritian products could enter the markets of the member states of the E.E.C. relatively free of tariffs.<sup>1</sup> Mauritian products, however, mean above all sugar, one of the products specifically excluded because of the Common Agricultural Policy of the E.E.C. In good years the Six were well able to produce all their sugar requirements, plus a small surplus for export, but when Britain entered the Common Market it was calculated that there would be a short-fall of around 1.3 million tons – more or less the same amount of cane that Britain usually imported from the less-developed countries under the Commonwealth Sugar Agreement. Since the European countries could expand their output of beet sugar there were pressures, notably from the French and Belgian farmers, to the effect that if Britain joined the E.E.C. she should be bound under the Common Agricultural Policy to buy European-produced sugar.<sup>2</sup> Mauritius had hoped and planned, however, that by being in O.C.A.M. and E.A.M.A. before the whole question of the *Associables* was raised, and above all by being on close terms with France, the island would get the maximum support for its sugar when Britain entered the E.E.C.<sup>3</sup>

In the event it was agreed, after some initial resistance, that Britain would continue to import the same quantity of sugar from those less-developed countries of the Commonwealth which became associated members of the E.E.C. under the Lomé Convention that replaced Yaoundé.<sup>4</sup> Mauritius has done particularly well out of the new agreement. It has an assured market at a high guaranteed price for 500 thousand tons – over one-third of the total African, Caribbean, and Pacific (A.C.P.) quota for the European Economic Community. The price has to be negotiated every year, but is normally well above the world market because it is linked to what is received by European producers in the E.E.C.<sup>5</sup>

Several factors helped to bring about this favourable agreement for Mauritius. The British Government fought hard on behalf of the small cane-sugar producers of the Commonwealth, not least because Britain benefited from cheap imports for so many years during the imperial connection that the local production of beet was not as high as it could

<sup>1</sup> Raymond Chasle, *L'Accord de Port-Louis: l'adhésion de Maurice à la Convention de Yaoundé II* (Port-Louis, 1973).

<sup>2</sup> *L'Express*, 26 July 1973.

<sup>3</sup> *Ibid.* 26 October 1971, 23 February and 8 July 1973, and 24 August and 3 September 1974.

<sup>4</sup> *Week-End* (Mauritius), 28 July 1974.

<sup>5</sup> The price was £260 per ton during 1975; *Mauritius Economic Review, 1971-1975* (Port-Louis, 1976), p. 45. During the financial year 1975-6, when £188 was being paid for the E.E.C. quota, the Mauritius sugar industry made a net profit of £20 million. *Financial Times*, 18 June 1976.

have been. One of the conditions of importing cane was that it should arrive as raw sugar in Britain, where the last and profitable stage of refining, as well as the packaging and distribution, was the virtual monopoly of Tate and Lyall. The refineries are located at the ports, and it would be costly to move and transform them to the beet-sugar areas. In addition, the British sugar interests in the islands of the West Indies, in Fiji, in Mauritius, and in Swaziland, meant that shipping and insurance interests were also involved. The French Government was motivated by its position in the Mascareignes not to heed fully the lobby of its beet producers. Finally, the world sugar context was favourable. The glut of sugar during the mid-1960s, when this fetched as little as £17 a ton, had turned to a shortage by 1969 largely due to a drought in the Soviet Union, and at one stage the price jumped to over £1,000 a ton. Therefore, by the time the agreement was reached when Britain entered the E.E.C., the A.C.P. producers could sell on the open market at very profitable prices.

In Mauritius the A.C.P. agreement, plus the high prices on the open market, amounted to a bonanza beyond the dreams of either the planters or the Government. The climate also helped because, notwithstanding a severe cyclone, the amount of rain and sun appeared in the right proportions to produce bumper crop after crop, and the output reached an all-time high. But, for the first time, there were other assets, because this boom coincided with large-scale investments in tourism and manufacturing for export.

It has often been stressed in the literature about the Third World that an important 'bottleneck' to development is the lack of capital.<sup>1</sup> In the case of Mauritius this shortage was not a symptom of underdevelopment, but rather of the distorted use of the surplus in the plantation economy, itself an aspect of the structure of the global colonial relations of which the island was part. Considerable profits would be made from sugar in the years of high prices, and the planters would accumulate capital. This would be ploughed back in the industry, so long as there was room for expansion; but with practically all the cultivable land of the island under sugar, there were no outlets for the surplus in Mauritius itself. The colonial structure of international specialisation discouraged the diversification of economic growth. As the demand for sugar was not dependent on the internal market, but on the world outside, it was not in the interests of the owners of this industry to raise wages. On the contrary, cheap labour cut down production costs, reduced imports,

<sup>1</sup> See J. E. Meade et al. *op. cit.* for the relevance of this model to Mauritius.

built up balance-of-payments surpluses, and contributed to the concentration of wealth in a few hands. Low wages, in turn, meant too small a market internally to be an incentive to diversify production away from sugar.

Without investment outlets in Mauritius, therefore, some of the profits made in the sugar industry were consumed in the form of imported sophisticated luxuries, while a good deal would be saved and invested abroad.<sup>1</sup> Mauritius thus exported capital to Britain and South Africa. It is important to stress that this took place in spite of the fact that Mauritius was atypical among sugar plantation economies in that, for historical reasons, most of the capital was locally owned. The planters never identified themselves with Britain; they lived and worked on the island, and considered themselves to be the original inhabitants. However, although Mauritius had a 'national bourgeoisie' which extracted and accumulated capital, it was structurally impossible for this small class to move outside the colonial framework.

An attempt was made after independence to reduce the capital drain by legislation, but new investment outlets in Mauritius reversed the trend by keeping profits in the island, and even bringing some back. In the euphoria of rocketing prices the Government agreed, in spite of grave unemployment, to allow the long-delayed further mechanisation of the sugar industry to go ahead to a limited extent. But of more significance was the availability of some completely new openings for capital investment, partly the result of the Government's policy,<sup>2</sup> but largely the outcome of new trends in the world capitalist economy, notably long-distance air transport, and the transnationalisation of capitalist production on a global scale.<sup>3</sup>

Tourism started timidly during the 1960s, but has now gathered strength with a growing number of Europeans fleeing the 'vulgar' places and the polluted Mediterranean, jetting in on overnight flights

<sup>1</sup> In the absence of exchange controls Mauritius was a net foreign investor throughout the 1950s; the long-term capital outflow amounted to 10 per cent of gross domestic capital formation. King, *op. cit.* p. 9.

<sup>2</sup> Despite the grave uncertainties caused by having such an open and dependent economy, Mauritius, like many other Third-World countries, has a government department that is responsible for planning long-term social and economic developments. The target of full employment by the end of the decade was set within the Government's *Development Strategy, 1971-1980* (Port-Louis), and the creation of more work was further emphasised during the economic boom by the *Travail pour tous* programme; *Mauritius Economic Review, 1971-1975* (Port-Louis, 1976). The 1976 five-year plan for 1975-80 aimed ambitiously to provide additional employment for 76,000, mostly in manufacturing industries and tourism, but the latest two-year plan for 1980-82 projects the more realistic figure of 22,600 new jobs. Interview with M. Ghururrum, Minister for Planning and Development, in *Week-End*, 10 August 1980, p. 5.

<sup>3</sup> See the interesting collection of papers by scholars of the Institute of Development Studies, University of Sussex, edited by J. Villamil, *Transnational Capitalism and Development* (London, 1979).

from Paris, Frankfurt, or Milan in search of the 'unspoilt' tropical island. Mauritians – by themselves or in association with French, British, or South African associates – have financed and built luxury bungalow-style hotels, complete with 'native exotica' designed to attract and entertain a wide variety of visitors. Foreign aid in the form of soft loans or grants from Britain, France, the E.E.C., and other international bodies have helped, notably in the improvement of the infrastructure, but the bulk of the capital raised for tourism has been on commercial terms, most of it Mauritian-owned.<sup>1</sup> Tourism is the ideal form of parallel development for the sugar industry: there is plenty of labour, capital is not scarce, and the beaches do not compete for sugar land. Indeed, food-importing Mauritius now grows vegetables between the lines of sugar canes to supply the hotels with fresh food. The Government is particularly happy that the tourists bring in foreign currency, and the building of the associated facilities has provided employment.<sup>2</sup>

But the really spectacular development in Mauritius of recent years has been the new, and for a time outstandingly successful, Export Processing Zone (E.P.Z.).<sup>3</sup> It must be recalled that the Yaoundé Convention opened the doors of the European Common Market to a long list of manufactured goods from the A.C.P. countries. And if for most of the Associated States this has remained a rather theoretical opening, Mauritius has grasped the opportunity offered by the large rich markets to start manufacturing for export.<sup>4</sup> Mauritian capitalists in the past had been willing to take risks only in sugar, where they understood the market very well; but they have now joined foreign firms who possess the necessary 'know how' in order to produce a range of locally manufactured goods for sale in Europe.

The Government provides as many incentives as possible: infrastructure, sites and factory space at low rents, cheap energy and duty-free raw materials, banking facilities, 'tax holidays', repatriation of profits, a guarantee against nationalisation, and 'political stability'.<sup>5</sup> But the two biggest attractions are plentiful, literate, cheap, adaptable labour, and access to the markets of the E.E.C. So it is not surprising that firms from France, Germany, Britain, Hong Kong, Switzerland, South

<sup>1</sup> *Financial Times*, 18 June 1976.

<sup>2</sup> The number of tourists has risen by 28 per cent per annum since 1970 to reach 73,000 in 1974. The gross earnings from tourism increased more than four-fold during the same period, to reach Rs112 million in 1974. *Mauritius Economic Review, 1971-1975*, pp. 90-1.

<sup>3</sup> See the special number of the journal of the sugar industry, *Prosi* (Mauritius), 102, July 1977.

<sup>4</sup> R. Garron, 'Le Particularisme des rapports entre l'île Maurice et la C.E.E.', in *Annuaire des pays de l'océan Indien*, Vol. II, 1975 (Aix en Provence, 1977).

<sup>5</sup> *Industrial Investment in Mauritius* (Port-Louis, 1976).

Africa, among others, have set up factories in Mauritius that produce anything from a wide range of electronic apparatus to 'antique' furniture, toys, suitcases, and textiles. Indeed, Mauritius is now the biggest supplier of knitwear to France, and has a substantial part of the British market.<sup>1</sup> Indian interests have moved some of the finishing stages of their textile industry to Mauritius to get over the E.E.C. regulations about 'country of origin'.

All the raw materials for the E.P.Z. industries are imported, mainly in the form of semi-finished goods. These may require one, two, or more stages of processing, but can then be re-exported as 'Made in Mauritius'. The 'raw' materials may start out in Australia, be processed in Hong Kong or Calcutta, 'finished' in Mauritius, and end up in the Galeries Lafayette in Paris or Littlewoods in Manchester. Mauritius with its cheap labour is one small part of a quasi-global organisation of production and distribution.

The economic climate in Mauritius has been transformed in a very short time by high sugar prices, tourism, and the Export Processing Zone. As the gloom and depression of the early 1960s gave way to boom conditions and mounting optimism,<sup>2</sup> the main beneficiaries of growth were, without doubt, the Mauritian capitalists. The owners of the sugar industry felt less exposed politically as a result of the diversification and internationalisation of their interests than on the eve of independence.<sup>3</sup> The Government not only forewent taxes from the E.P.Z. and, for a time, from tourism, but used the extra revenue from sugar during the boom years to subsidise foreign and Mauritian capital by the provision of below-cost facilities in order to encourage the diversification of investments.

Nevertheless, Mauritius remains principally, if no longer altogether, dependent on sugar,<sup>4</sup> while the various capital developments have not reduced the external orientation of the economy, because tourism and the E.P.Z. are even more subject to international fluctuations, as highlighted by the post-boom recession. From 1976 onwards the price of sugar on the world market once again fell below the cost of

<sup>1</sup> *Financial Times*, 18 July 1976.

<sup>2</sup> The G.N.P. increased by 250 per cent between 1967 and 1975 at current factor costs, and when corrected for inflation this left an annual growth rate of over 11 per cent. The gross domestic fixed-capital formation increased from £13 million in 1970 to £70 million in 1974. Minister of Finance, Budget Speech, 1976.

<sup>3</sup> According to the *Financial Times*, 18 June 1976, up to 22 per cent of the capital invested by the sugar industry has gone into tourism and manufacturing. The 1971-5 plan envisaged that some Rs400 million would be available from external sources; in fact, receipts from abroad totalled only Rs143 million, while local sources provided Rs603 million. Budget Speech, p. 3.

<sup>4</sup> J. M. Boisson, 'Les Comptes de l'économie de Maurice', in *Annuaire des pays de l'océan Indien*, Vol. 1, 1974 (Aix en Provence, 1976). See also *Financial Times*, 18 June 1976.

production, and the E.E.C. figure was accordingly renegotiated downwards.<sup>1</sup> One European country after another has complained that cheap imports from Mauritius have affected employment at home. However, although wages are still pitifully low by western standards, their rise during the boom years has reduced the principal attraction of Mauritius. The number of new firms entering the E.P.Z. had already started to decline by the end of 1975, while some established enterprises are seeking governmental help in order to survive.<sup>2</sup>

The rise in oil prices has severely affected Mauritius because of the increased cost not only of local energy, but also of air fares, and hence a reduction in long-distance tourism. Expectations had risen steadily during the early 1970s, so that the level of public spending and imports cannot easily be reduced, even although exports have flagged. Add to this the growing imported inflation in an economy as open as that of Mauritius, and it became inevitable that something had 'to give': foreign-exchange reserves melted from Rs 1,100 million in 1975 to a bare Rs89 million – less than enough for two weeks imports – in August 1979. The Government had then to secure an emergency soft loan of Rs730 million from the International Monetary Fund in exchange for a drastic 30 per cent devaluation, cuts in public expenditure and food subsidies, curbs on wages and prices, a rise in the bank rate, and a ceiling on bank lending.<sup>3</sup> More importantly, development has mitigated but not solved the main problem, namely unemployment, nor has it brought about 'political stability'.

#### DEMOCRACY IN AN OVERPOPULATED DEPENDENT SOCIETY

With the end of Indian immigration the population of Mauritius had stabilised around the 400,000 mark,<sup>4</sup> but after World War II there was a sudden, dramatic 'explosion', caused mainly by a rise in the number

<sup>1</sup> In addition to the guaranteed base price there is a fluctuating 'monetary compensation' which reflects the relationship of sterling to the E.E.C. unit of account. Thus, while Mauritius received an average of £226 a tonne for its E.E.C. quota in 1978, the next year there was no premium above the basic £198.38; since the producers estimated that their 1979 costs were no less than £200 a tonne, even the most efficient could only earn 'a derisory return on capital', according to the *Financial Times*, Special Report on Mauritius, 6 December 1979. The price of sugar on the world market went up again during the 1980 harvest, but unfortunately, due to a severe cyclone, Mauritius did not gain all the expected benefits because it was unable to fulfil its E.E.C. quota.

<sup>2</sup> *The Times*, 8 March 1978.

<sup>3</sup> *Financial Times*, 6 December 1979. The I.M.F. loan conditions have been eased recently, and a number of western states, led by France, have formed a consortium to provide Mauritius with 2,000 million Rupees, 'to pull us out of the hole we are in', according to the Minister of Finance, who linked this planned rescue with the Diego Garcia base and the pro-western policy of Mauritius. *Le Mauricien*, 10 July 1980.

<sup>4</sup> H. C. Brookfield, 'Population Distribution in Mauritius', in *Journal of Tropical Geography* (Singapore), Vol. 1959, p. 4.



of births associated with the post-war boom in sugar prices, as well as a decline in the death rate by the rapid elimination of malaria. Indeed, by the time of independence, Mauritius had become one of the most densely populated agricultural countries in the world.<sup>1</sup> The rate of growth, however, has fallen off during the 1970s, almost as dramatically as it went up in the 1950s. Education, rising standards of living, and birth control, have all helped, but even so the total population will continue to increase in the years ahead because of its very young age-structure.

Over 50 per cent of all Mauritians are below the age of 24, and this means that every year some 9,000 new job-seekers enter the labour market; for most, the chance of ever finding work is bleak. In the sugar industry, the employment situation has gone full circle: the insatiable demand for labour in the nineteenth century caused the massive immigration of Indians, but now with all the available agricultural land under cultivation the industry cannot provide jobs for the growing population. Indeed, more sugar could only be squeezed out of the small land surface of Mauritius by shedding labour and increasing mechanisation. Further centralisation of milling, the installation of sugar silos at the port for bulk shipment to Europe, the reduction of the length of the crop season through mechanised cutting and loading of the canes, would all increase efficiency. The large estates produce considerably more sugar per acre than the 'small planters'. This is in part due to the poorer quality of land farmed, but the main reason is that the large millers/planters follow a different economic rationale. Because milling involves a great deal of fixed and relatively little variable capital, it is in the interests of the owners to do everything possible by way of fertilisers, irrigation, and machines, in order to produce a large quantity of canes, since losses in planting through over-capitalisation are more than made up when the mills work at full capacity.

By way of contrast, the 'small planters' produce less cane per acre because they do not put so much capital in their fields, and so from the point of view of the sugar industry as a whole they should really

<sup>1</sup> See R. M. Titmuss and B. Abel-Smith, *Social Policies and Population Growth in Mauritius* (London, 1961), for a thorough study of the population problems of the island. The number of inhabitants has risen as follows: 1846, 158,462; 1861, 310,050; 1901, 371,023; 1944, 419,185; 1952, 501,415; 1962, 681,619; 1972, 826,199; 1979, 910,000 estimated. Sources: Central Statistical Office, *Bi-Annual Digest of Statistics* (Port-Louis), 1969, *Facts about Mauritius* (Port-Louis), 1976, and *Financial Times*, 6 December 1979. The population rate of growth reached a peak of 3.1 per cent in 1962, but in the 1970s this dropped: to 1.94 by 1972, and to only 1.44 per cent by 1977, a low figure by Third-World standards. *The Times*, 8 March 1978.

disappear.<sup>1</sup> But here again, as with mechanisation, there has been a real conflict between the demands of employment and the quantity of output. There was no question of reducing the production of sugar on which, together with the price obtained, real income per head depended. With universal suffrage it was difficult not to give high priority to employment. The Government has done a great deal for the 'small planters': mechanisation has been retarded, and part of the increased revenue of the boom years has been used to provide 'relief work' under the *Travail pour tous* programme. For a time, the creation of extra jobs was given a boost by the development of the infrastructure, by the construction of more Export Processing Zone facilities, and by the building of hotels and restaurants. More permanent employment, however, especially for the tourist and E.P.Z. industries, has been largely female labour. Women are paid substantially less than men, and they tend to be less unionised and militant.

But the sugar industry must continue to shed labour and become increasingly mechanised to remain competitive on a world scale.<sup>2</sup> Although the economic boom of the 1970s enabled the employment target of the first five-year plan to be exceeded by creating more than 52,900 jobs,<sup>3</sup> the 1975-8 plan fell far short of the original figure of 76,000.<sup>4</sup> So the worries of the Government with regard to unemployment, although alleviated for a time, have returned with even more pressing urgency, especially as this is particularly explosive from a political point of view.<sup>5</sup>

We have touched upon the increased socio-economic importance of the indentured labourers through the acquisition of land. The 30,000 'small planters' of sugar cane today are a residual legacy of that early upward movement of Indians in Mauritius. Although their survival is threatened by the changing shape of the sugar industry, they form an

<sup>1</sup> Brookfield, 'Problems of Monoculture and Diversification in a Sugar Island', loc. cit. pp. 32-3.

<sup>2</sup> *Financial Times*, 6 December 1979. According to *Week-End*, 29 June 1980, the sugar silos for bulk loading have finally been installed, and these have cut down the cost of transporting the crop to Europe since the ships are now turned around very much faster. But from the point of view of employment and the class struggle, the *avant-garde* of the Mauritius working class has been weakened, since large numbers of dockers, always the spearhead of the organised labour movement, have been made redundant. The financial compensation for redundancy was a small price which the bourgeoisie paid not too reluctantly for weakening this strategically located element of proletarian power. See Port-Louis Harbour and Dock Workers Union, *Bord de la mer* (Port-Louis, 1980).

<sup>3</sup> *Mauritius Economic Review*, 1971-1975, p. 28.

<sup>4</sup> *Financial Times*, 6 December 1979. The latest and more modest target - as indicated on p. 92, fn. 2, above - is to create 22,600 new jobs during 1980-2.

<sup>5</sup> See the pessimistic analysis of Robin Cohen in *Manpower and Unemployment Research* (Montreal), April 1978, reproduced in *Le Mauricien*, 9 August 1978.

essential variable in the political equation, and the parties cannot afford to ignore them.<sup>1</sup> The political ascendancy of the Indians has been based not only on land ownership, but also on two other interlinked factors: European-type education and the right to vote. Land ownership provided an economic base for some Indians to finance the education of their sons for government jobs and the professions, all the more keenly sought after because the top posts in the sugar industry were in the hands of the creoles and so out of reach for the descendants of the indentured labourers. In fact, not many succeed in joining the public service, while those who proceed to higher studies in Europe and enter the professions are fewer still. But some do, and this is sufficient to keep alive for many the myth that education is the best way of getting out of the sugar fields into a prestigious job in town.

The drive for education in colonial Mauritius was reinforced by the qualifications to vote: property and/or a salary so high as effectively to bar most Mauritians. Then, when these were removed after the war, a literacy criterion was kept,<sup>2</sup> and this led the M.L.P. to put priority on schools at the same time as pressing for electoral reform.<sup>3</sup> The result is that primary education is now free and available to all Mauritians. The Government also provides limited secondary education of the British grammar-school type, but such is the demand at this level that a large number of private fee-paying institutions flourish, offering instruction of varying standards that lead to the Cambridge Senior School Certificate or the G.C.E. Failure rates are very high; but so great is the parental wish to give their children a chance to move out of the sugar fields that they are not deterred, and would go to great lengths, saving and depriving themselves to finance their sons through 'College'.

For many Mauritians, this type of education does, indeed, mean escaping from sugar, but only to fall into more or less permanent unemployment. The number of governmental jobs, even on the inflated scale they have reached in Mauritius, just cannot cope with the ever-increasing number of semi-educated youths who enter the labour market every year looking for the type of office work they feel their 'education' has qualified them for. Some of these unemployed 'graduates' give private tuition, or even open new 'Colleges' which pro-

<sup>1</sup> V. Nababsing and R. Virahsawmy, 'The Characteristics of the Small Planter Class in a Small Plantation Economy', Conference at the University of Mauritius, August 1976.

<sup>2</sup> See *Revision of the Constitution of Mauritius, 1947*, Cmnd. 7228.

<sup>3</sup> For political developments in Mauritius in the post-war period, see J. C. Leblanc, *La Vie constitutionnelle et politique de l'Île Maurice de 1945 à 1958* (Madagascar, 1968), M. N. Varma, *The Struggle of Dr Ramgoolam* (Port-Louis, 1976), and *Le Souffle de la libération, quarante ans de travailisme* (Port-Louis, 1976).

duce yet more 'G.C.E. failed'. Thus the education system feeds on itself, superimposed upon and ill-adapted to the plantation economy.<sup>1</sup> The frustrated, semi-educated young Mauritians became very active politically and flocked to the *Mouvement militant mauricien*.<sup>2</sup>

The M.M.M. started shortly after independence as a radical movement of young people. Aably led by a white creole, Paul Berenger, fresh from 'the events' of 1968 in Paris, it rapidly built up its strength on the mass disenchantment that followed independence and the formation of the coalition government. Standing on a frankly non-ethnic class platform, and advocating land reforms, the nationalisation of the sugar industry, direct democracy, a new system of education, and the upgrading of the creole language, the M.M.M. drew crowds of several thousands at its open-air meetings.<sup>3</sup> The formation of the coalition government had already led to the amendment of the constitution, and to the postponement of general elections. But in the one bye-election held – before they too were suspended<sup>4</sup> – the M.M.M. won a landslide victory in the constituency of the Prime Minister himself.<sup>5</sup>

The M.M.M. had been very successful at organising trade unions in the key sectors of sugar, transport, and docks. A stoppage at the docks in December 1971 escalated into a general strike. After some initial hesitations and consultations with the British, the Government declared a state of emergency, imprisoned the leaders of the M.M.M., confiscated its press, and outlawed its trade unions. There was no uprising by the population at large,<sup>6</sup> and when the economy took a turn for the better a year later, the M.M.M. leaders were released, albeit forbidden to hold meetings or to leave the country.<sup>7</sup> In the meantime, prison and repression generally had brought to a head clashes of personality and political orientation, with the result that the movement divided into a minority of 'radicals', and a majority of 'moderates' who were

<sup>1</sup> The conclusions reached by B. Benedict, 'Education without Opportunity', in *Human Relations* (New York), 11, 1958, remain valid today. If anything, the greater availability of post-secondary education now compounds the problem: unemployed university graduates compete with school-leavers for white-collar posts. Recently the Government has taken over the financing of the 'Colleges' but without changing the structure of the system, and there are signs that it will not be able to go on footing the bill after the I.M.F.-imposed restrictions.

<sup>2</sup> In 1975 the 'College' students marched on the capital and disturbances broke out when they were confronted by the Minister of Education accompanied by the Security Adviser and the Riot Unit of the Police. See *Week-End*, 25 May 1975 and 1 June 1976. More recently the students at the University staged a sit-in, and kidnapped the Vice-Chancellor in protest about their bleak prospects for employment. *Ibid.* 15 April 1979.

<sup>3</sup> M.M.M., *Pour un île Maurice possible* (Pourt-Louis, 1970). <sup>4</sup> *L'Express*, 19 October 1972.

<sup>5</sup> *Ibid.* 21 September 1970. The electoral system of Mauritius, one of the most complex in the world, provides for three-member constituencies.

<sup>6</sup> *Ibid.* 16 and 18 November 1971; also 9–10, 13, 15–16, 18, 20–22, and 26 December 1971.

<sup>7</sup> *Ibid.* 23 December 1972 and 12 January 1973.

prepared, under certain conditions, to work with the M.L.P. but not with the P.M.S.D.<sup>1</sup>

The M.L.P. included a number of 'hard liners' close to the P.M.S.D. who were in favour of rapid economic growth based on high profits and a docile labour force. They were opposed by those who argued that this policy cut the M.L.P. off from its mass support in the sugar fields and drove the E.P.Z. workers into the arms of the M.M.M., making it impossible to hold elections. The M.L.P. was held together mainly by the ageing Prime Minister, Sir Seewoosagar Ramgoolam, a master of the politics of accommodation in order to keep himself in power. A francophone statesman with his *petites* and *grandes entrées* at the Elysée, Ramgoolam makes quite sure of always being welcome at No. 10 Downing Street as well; as the man of Diego Garcia he never misses an occasion to speak up against the militarisation of the Indian Ocean;<sup>2</sup> equally at home in Nairobi and New Delhi, Ramgoolam has been President of the O.A.U. without allowing that to affect the sale of Mauritian tea to South Africa, or the arrival of tourists and investments from the Republic of *apartheid*.<sup>3</sup> If he allows Soviet fishing boats to change their crews in Port-Louis, he also accepts Peking's help with the building of the airport to bring more tourists from the West.<sup>4</sup> Having used the leaders of the I.F.B. to gain independence, Ramgoolam turned them out, drew the P.M.S.D. into his administration, took away the support of the sugar industry for that party, encouraged some of its leaders to join the M.L.P., then broke the coalition, clearing the way for a *rapprochement* with the M.M.M.<sup>5</sup> But the price for a coalition of the 'left' without elections was judged to be too high.<sup>6</sup> So Ramgoolam decided, in 1976, that with the economic boom drawing to an end, if he was going to have an election it was then or never.

The record of the Government was, to some extent, an electoral asset. The M.L.P. had made improvements in the education and health of the masses, notably in the rural areas. Subsidies were provided on basic foods to cushion the effect of inflation on the poor. There were small

<sup>1</sup> Ibid. 19 and 24 April 1973, and 6 May 1973.

<sup>2</sup> The U.N. General Assembly declared the Indian Ocean as a Peace Zone in December 1971, and set up a Special Committee of 15 member-states, including Mauritius, 12 months later. According to *Le Mauricien*, 8 July 1980, Ramgoolam talks of Diego Garcia as a 'fortress of peace' in London and as a 'threat to peace' in New Delhi.

<sup>3</sup> The 13th Summit of the O.A.U. in Mauritius in 1976 provided an opportunity for Ramgoolam to show his virtuosity in the diplomacy of Africa, notably with regard to the South African connection. *L'Express*, 26 June 1976, *Le Militant* (Mauritius), 30 June 1976, *The Nation* (Nairobi), 3 July 1976, and *Le Mauricien*, 6 July 1976.

<sup>4</sup> *Le Mauricien*, 5 February 1974. See *Week-End*, 6 September 1980, for the recent 'successful visit' to Mauritius by Ji Penfei, one of China's Vice-Prime Ministers.

<sup>5</sup> *L'Express*, 15 January 1974.

<sup>6</sup> *Week-End*, 28 July 1974, and *L'Express*, 28 April 1975.

family-allowances and old-age pensions. The tax system was favourable to the 'small planters', and generally to rural inhabitants. Village development programmes and *Travail pour tous* had provided relief employment. However, the fact that the régime had been in office for a long time – both before and after independence – and that there were rumours of corruption and incompetence, were not in its favour. The lack of organisation of the M.L.P., its ageing leadership, and its loss of contact with the masses were grave handicaps. The amendments of the constitution, muzzling the press, banning political meetings, and not holding elections for a decade were graver still.

But the fundamental problem was that the M.L.P. had inherited the British rôle in office: it was objectively the partner of the sugar barons. Ousting the P.M.S.D. from the Government at the right time, and pointing to it as the tool of the capitalists, could camouflage, to some extent, this electorally unholy alliance. In addition, the P.M.S.D. was discredited through its association with bungled attempts to assassinate the leaders of the M.M.M.<sup>1</sup> Accusing 'ban blancs la' in the *baitkas* for all the ills of the Indians was a well-tried method of electorally tapping the historical anti-white grudge, and glossing over the rôle of the Indian bourgeoisie; and this time the use of ethnic and religious institutions to mobilise support for the M.L.P. was even more in evidence.<sup>2</sup> The difficulty now, however, was that the M.M.M. was active everywhere: well organised, making full use of the educated youths in the villages, it drove home its class message to the rural electorate. The M.L.P. was criticised relentlessly for its class 'treason', for its strike-breaking, its repression of the workers, above all for collaborating with the exploiters. The M.M.M. also attacked the foreign policy of the M.L.P., notably for the loss of Diego Garcia, the links with South Africa, and generally the pro-imperialist position of the Government.

The results of the elections held on 20 December 1976 enables some interesting comparisons to be made with those which preceded independence in 1967, as well as an assessment of the direction of political change during a period marked by rapid economic growth. Once again there was a heavy poll, with over 90 per cent of the electorate turning out to vote, and this time there was no violence. Calmly, and with a discipline which could be envied by some 'older

<sup>1</sup> *L'Express*, 26 and 29 November 1971, and 27 August 1972.

<sup>2</sup> For the rôle of the Seva Shiveir, see *ibid.* 16 January 1976. For communal and caste considerations, see *ibid.* 5 September 1976. S. Bhuckory, *Profile of the Hindu Community* (Port-Louis, 1972), and P. Ramsurrun, *Anya Samaj Brings Independence* (Port-Louis, 1970), give interesting insights and supplement Benedict, *op. cit.* on the rôle of the Hindu religion in Mauritius.

democracies', the people of Mauritius exercised their arbitration through the ballot box, and removed all but 11 of the 62 members of the Legislative Assembly who were seeking to be re-elected – only four Ministers retained their seats.<sup>1</sup>

The M.M.M. won the contest, as had been expected, gaining 39 per cent of the votes, and becoming the largest party in the new Assembly, with 30 out of the 62 seats, including the capital, Port-Louis, where it had its largest support. The M.L.P. came second with 25 seats, and although it gained 38 per cent of the votes, this was not much ahead on its 1967 score in spite of 15,000 new voters. Ramgoolam was clearly not being backed by young Mauritians, even in the rural areas, thereby reflecting the inability of the M.L.P. to fulfil the rising expectations of the newly-educated, despite an emphasis on schooling. The great loser was the P.M.S.D. which won only 7 seats – 16 less than in 1967 – and polled less than half the number of votes it had then, in spite of the increased electorate. The P.M.S.D. retained its two seats for Rodrigues where the population, long neglected by Port-Louis, had voted unanimously against independence as part of Mauritius in 1967.<sup>2</sup> The Roman Catholic islanders do not identify with what they see as a Hindu-dominated Mauritius, and have retained their support for Duval who recently threatened to lead Rodrigues to secede if a 'Communist' government is elected in Mauritius.<sup>3</sup>

In ethnic terms it would seem that the P.M.S.D. has been replaced by the M.M.M. as the party of the minorities: the important difference is that whereas the core base of the P.M.S.D. was the white and coloured middle-class creoles of the inland towns of Plaines-Wilhems, it is the Muslims and blacks of the capital that back the M.M.M.<sup>4</sup> The M.L.P. just kept the solid support of rural Hindus, but improved its position among the urban middle class of all ethnic categories, and if this trend continues it might displace the P.M.S.D. altogether as the party of 'the haves' in the towns. There are thus signs of a regrouping of the electorate of Mauritius along class rather than ethnic lines – the one

<sup>1</sup> Under the Mauritian constitution, with the communal considerations introduced by the amended Banwell electoral system, eight 'corrective' seats are allocated after the election results are known: this time four seats went to the M.L.P. and four to the M.M.M. opposition. It was thus possible for the Government to reintroduce some of the defeated Ministers back into the House. For a short background to this system, see S. A. De Smith, *Mauritius: constitutionalism in a plural society*, reprinted from the *Modern Law Review* (London), November 1968.

<sup>2</sup> One of the P.M.S.D. deputies for Rodrigues made a formal request to the British Government that the island should be allowed to secede after 1967, but this was turned down in London with little delay. *The Times*, 13 January 1968.

<sup>3</sup> *Week-End*, 24 August 1980.

<sup>4</sup> The middle-class Mauritians who work in Port-Louis commute every day to the residential towns inland and higher up the plateau, leaving proletarian workers and small shop-keepers as the electorate of the capital.

overtly communal party, the C.A.M., did not succeed in 1976 in getting a single candidate elected, although ethnic considerations still play an important part in electoral politics.

The result of the 1976 elections made the question of alliances even more problematic than previously. Although the M.M.M. was in a position of strength in both the Legislative Assembly as well as in the country,<sup>1</sup> it did not have the overall majority of seats that would have entitled it to form the new government. So some kind of coalition was necessary, with the initiative being taken again by Ramgoolam, because although the M.M.M. had moved away considerably from its initial radical position,<sup>2</sup> it was still not acceptable to powerful internal and external interests, which feared that its demands would not be to their liking.<sup>3</sup> Inevitably, the M.L.P. turned once again to the P.M.S.D. as a junior but necessary partner in order to form a new government, initially with the slim majority of two seats. This enabled Ramgoolam to continue as Prime Minister, and to declare in his first broadcast to the nation afterwards: 'The majority of the electorate have voted against abrupt and radical change', and no doubt to the joy of all neo-colonisers, continued: 'Mauritius will continue to give all encouragement and facilities to overseas and local investment'.<sup>4</sup>

<sup>1</sup> A measure of the new balance of forces in the country may be gained from the following developments: when an M.M.M.-supported strike paralysed the port and transport in 1979, the Government chose to negotiate (rather than call out the troops as in 1971), and when several M.M.M.-affiliated trade unionists went on a hunger strike in 1980, the Government was persuaded to agree with their demands. See *Week-End*, 19 and 26 August 1979, and 28 September 1980.

<sup>2</sup> The *Programme gouvernemental du M.M.M.* (Port-Louis, 1973) included the nationalisation of only 3 (out of 21) of the sugar factories with their land, to be run by an autonomous authority comprising representatives of management, the workers, and the government; the nationalisation of the docks, insurance, and transport; greater stress on co-operatives and diversification of the economy. Since then the programme has been revised to take into account even more the 'realities' of Mauritius.

<sup>3</sup> *Le Monde diplomatique*, July 1977. The 'moderate' leadership of the M.M.M. aims to win power through the ballot box by making a strong bid to win over the middle classes, and to reassure both the local plantocracy and the western powers. The kind of socialism the M.M.M. leaders want to create is pluralistic, *autogestionnaire*, and democratic. They go beyond 'social democracy' in their search for more direct participation at the grass roots in local politics, as well as in the firms and factories, but make a complete break with totalitarian socialism of the Soviet type. If nationalisation has to be imposed from the top, argues Paul Béranger, then there will be none. Frequently quoting Michel Rocard, another 'veteran' of May 1968, and a would-be socialist candidate for the French Presidency, the leader of the M.M.M. calls for the 'utmost rigour in confronting economic realities which unfortunately cannot bend to the wishes and the dreams of revolutionaries'. *Le Nouveau militant* (Port-Louis), 30 July 1980.

<sup>4</sup> The weak parliamentary position of the Government is made the more unstable by continued infighting over the succession to Sir Seewoosagar Ramgoolam who was born at the turn of the century. The two most likely candidates are Sir Satcan Bolell, Minister of Agriculture, a high-caste Hindu of the majority 'Calcutta' group – reputed, for the time being, to be acceptable to the P.M.S.D. and sugar interests – and Sir Veerasamy Ringadoo, Minister of Finance, a Hindu of the minority 'Madras' group, albeit reputed to be 'too soft' towards the M.M.M. The M.L.P.'s problems have been compounded by the dismissal of two Ministers for alleged corruption, and



## SOME CONCLUSIONS

Mauritius has always been dependent. Entirely created by colonialism, dependence was built into the whole being of Mauritius as an integral part of its economic, social, and political structures. But the island was not undeveloped because capitalism found virgin soil in Mauritius and flourished. The colonial rulers worked in symbiosis with the sugar economy and society. Although political power rested ultimately on British force, it was not as if this rule was experienced negatively by all the inhabitants. The owners of the sugar industry, creoles as well as Indians, the big merchants, the politicians 'working the system': they dominated and exploited other Mauritians more directly and thoroughly than Britain ever did. It would be an oversimplification to say that they were merely 'agents' of the colonial power, because in a very real sense the opposite was true: they used the military, administrative, and ideological power of Britain to maintain their dominant position in Mauritius, and to extract the surplus produced by the slaves, the indentured labourers, and the sugar proletariat.

Independence was not the outcome of a national liberation struggle. This does not mean that the bourgeoisie was incapable of playing a national rôle, but rather that their interests were inextricably tied to the larger colonial system. It was Britain which decolonised Mauritius, and in doing so brought to power the fraction of the bourgeoisie that was willing to perpetuate the existing internal and international economic arrangements, and had the best chance of getting sufficient support from the grass-roots to last. This latter factor was crucial, because political authority in the ex-colonial situation was programmed to rest on the consent of the governed. Would the leaders of an independent Mauritius be able to continue their partnership with the bourgeois fraction dominating the economy, and succeed in retaining the electoral support of the exploited masses?

So far the Government of Mauritius has not significantly changed the basic socio-economic structures it inherited from colonialism, while

the defection of two or three backbenchers who have formed a new party.

One way out for Ramgoolam personally would be to make Mauritius a Republic with himself as President, and the necessary constitutional changes have been talked about on and off - see, for example, *Week-End*, 13 and 29 July, 12 August, and 25 November 1979. But since the consensus within and between the parties in Mauritius would be for the figure-head Indian-type of President, the power struggle inside the M.L.P. for the all-important post of Prime Minister would not thereby be resolved. In any case, Ramgoolam has recently said that he will stay on 'till my last breath'; *Le Mauricien*, 25 April 1980. And the M.M.M. has expressed the wish to see Ramgoolam remaining in power until the next general election; *Week-End*, 22 June 1980.

retaining – if heavily circumscribed at times – the essential features of a representative democratic régime. The economic growth that followed independence has undoubtedly helped; and so too, paradoxically, have ethnic politics, although detrimental to nationalism. An authoritarian régime resting on an alliance of Indian political rule and creole economic power would alienate the support of the Indian masses; and conversely, a coup by the creole bourgeoisie would be doomed in the teeth of Indian opposition. Independence and the rapid rise of the M.M.M. have brought back the element of class into Mauritian politics, and to the extent that class conflicts become salient features of the contemporary scene, national ideology will become the integrative factor supporting the régime, and ethnic considerations will be eroded. The leaders of a future M.M.M. government would have to operate within the same structural constraints. Younger, better organised, and closer to the masses, they would certainly be more willing, and probably more successful, in reforming the system. However, short of external intervention, radical changes are unlikely.<sup>1</sup>

What is the sense of dependence today? and can Mauritius be different? Mauritius now has its own state: it is no longer directly dependent on a colonial power. The island, however, remains dependent on Europe, and beyond the E.E.C., on the transnational capitalist system. Does dependence then mean that the vast majority of the inhabitants are exploited by a minority of Mauritians who are themselves part and parcel of world-wide capitalism? In any case, there is little that Mauritius can do about the contemporary international economic order. The option of non-dependence, if this means a closed economy, is totally unrealistic; it is doubtful, indeed, if the island would then be able to feed its population, let alone grow economically. With an open economy, Mauritius is inevitably dependent. Within that dependence there is growth, and since independence in 1968 the island has shown a limited yet real capacity to adjust to changes and opportunities in the capitalist world.

<sup>1</sup> In a recent interview Paul Béranger, the leader of the M.M.M., said: 'There can be no doubt that Great Britain, France, the United States, will try to help the present régime. . . we are not going to bear a grudge for that, but we must ask them to know where to draw the line. . . in their meddling in Mauritius internal politics'. *Le Mauricien*, 29 July 1980.

**ANNEX 97**

*The Times*, Monday 8 November 1965

# MAURITIUS CABINET SPLIT OVER

## £3M. OFFER FOR BASE

From Our Diplomatic Correspondent

Reports from Mauritius at the week-end point to serious trouble ahead before the British and United States Governments can negotiate the purchase of Diego Garcia, the coral atoll dependency of Mauritius which, being 1,200 miles to the north-east of Mauritius itself, is well situated in the middle of the Indian Ocean for use as a communications centre and for other military purposes.

It was agreed at the constitutional conference on Mauritius in London in September, that defence talks should be held between the British Government and the Mauritius Government led by Sir Seewoosagur Ramgoolam, and according to the reports from Port Louis, the capital of Mauritius, yesterday, the British Government have offered £3m. for Diego Garcia. This offer, however, when discussed by Mauritius's coalition Government on Friday threatened to cause a split.

Three Ministers—Mr. Jules Koenig, the Attorney-General; Mr. Gaetan Duval,

Minister of Housing, Lands and Immigration; and Mr. Raymond Devienne, Minister of State Development, who are respectively leader, deputy leader, and chairman of the Parti Mauricien—stated that the British offer was inadequate, and Mr. Duval is reported to have said to a public meeting on Friday: "We will not accept an Anglo-American base if America and Britain are not ready to buy all our sugar at a preferential price and accept Mauritian immigrants."

Diego Garcia is not the only possible choice for a future base, but for effective deployment of naval and air support over the Indian Ocean in years ahead the Americans need a centre between their base in the Philippines and their communications centre at Asmara, the Ethiopian Red Sea port.

Being on the direct route from the Red Sea to Australia, Diego Garcia could also be useful to the British as a staging post. Other possible links in the chain include the Seychelles, 1,000 miles east of Zanzibar, and Aldabra Island, 300 miles north of Madagascar.

**ANNEX 98**

*Le Mauricien*, 15 December 1965, p.4

# LE MAURICIEN

DE JOURNAL FLY GIRL PAR MAURICE RIVET DE 1944 A 1957. LE NUMERO 10 0000

## LES TRAVAUX PARLEMENTAIRES

### L'Opposition tente en vain d'obtenir une double indemnité pour les travailleurs des services essentiels

#### M. Ringadoo accuse l'Opposition d'être à la solde de l'industrie sucrière

#### M. JOMADAR : Les employés d'autobus devaient paralyser le transport en commun l'année dernière

**A**UCUN député mauricien n'a osé proposer la double indemnité pour les travailleurs des services essentiels. Mais lorsque le projet de loi fut présenté, l'opposition a tenté en vain d'obtenir une double indemnité pour les travailleurs des services essentiels. M. Ringadoo a accusé l'opposition d'être à la solde de l'industrie sucrière.

## Le Conseil provisoire de l'Université

Le conseil provisoire de l'Université a tenu sa première séance le 15 décembre 1965. Les membres du conseil sont : M. Ringadoo, M. Jomadar, M. ...



Ces quelques premiers visages de votre Université. Toutes n'y ont pas été, mais voici ceux qui ont participé à la formation de l'Université.

## LA BASE DE DIEGO-GARCIA

### Le gouvernement pressé de questions à l'Assemblée législative

#### Le ministre Forget déclare :

- Pas de débat au parlement
- Aucun pays afro-asiatique n'a protesté

Le ministre Forget a déclaré à l'Assemblée législative que le gouvernement n'a pas l'intention de débattre la question de Diego Garcia. Il a déclaré que aucun pays afro-asiatique n'a protesté contre la présence de la base.

## The recognition and respect of the presence of Islam first

There is no question of political alliance before that. The recognition and respect of the presence of Islam first. This is the message sent by the government to the community.

## Le départ des Glosters

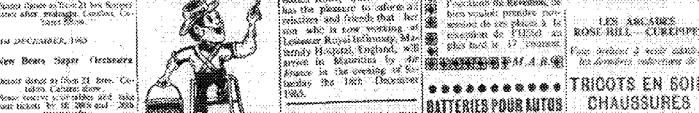


As garde à vous, les Glosters attendent la location du chef exécutif.

## Les travaux de la Commission électorale

La Commission électorale a tenu sa première séance le 15 décembre 1965. Les membres de la commission sont : M. Ringadoo, M. Jomadar, M. ...

## Carols et Antiques



Le Festival de Noël a été célébré avec beaucoup de succès. Les élèves ont présenté de nombreux carols et antiques.

## L'EAU

Il est important de s'occuper de l'eau que nous buvons. L'eau est une ressource précieuse et nous devons nous assurer qu'elle est propre et saine.

### Germotol antiseptique

La Pharmacie Nouvelle

### SENSATIONNEL ! SENSATIONNEL !

Presses-vous pour vos achats de fin d'année

### PYE ou ECKO

Produit de haute qualité

### AVIS IMPORTANT

REBOUTON INTERESSANTE sur les joints des OUVERTURES METALLIQUES KENYA CEMENTS

### CHRISTMAS SHOPPING... 1965

Allez faire vos achats de Noël

### AUSTIN 1800

Le meilleur des mondes

### Gasa Maria

Produit de haute qualité

### Permoglaze

Produit de haute qualité

### Dr D. Anuth

Produit de haute qualité

### BreathofSpring

Produit de haute qualité

### SOCONAC

Produit de haute qualité

### Blue Cross

Produit de haute qualité

### Linzi

Produit de haute qualité

### EXPOSITION DE PEINTURE

Produit de haute qualité

Les finances publiques

Poids de réserve au 30 septembre... Le total des dépenses...

Les TRUSTEES de la Clinique Mauricienne

Les Trustees de la Clinique de Médecine... pour 1966 seront: Drs S. Raymond, A. Williams, R. Rana...

GRAND CONCOURS DE CHANTS

Concert, cantades et yoga... SE STANIS SAEBI, 723045

Une foule Innombrable le 5 décembre



Le Dr J. M. Curé, Travailleur, a demandé au chef-secrétaire de l'Assemblée législative de convoquer les députés...

Les bases ne sont pas une barrière au progrès constitutionnel

M. FRANCIS BROWN, membre de la Grande-Bretagne aux Nations Unies... dans une récente déclaration...

The Mauritius Muslim Democratic League (Ittehad-Tanzim-Iman)

MANIFESTO No. 1... (A) The need for a new organisation... (B) The new stand... (C) The policy...

Un Mauricien au Guildhall School of Music and Drama

Un Mauricien diplômé de Guildhall School of Music and Drama... M. Lanning a été nommé directeur...

Une expédition dans les îles du Commonwealth

Une expédition dans les îles du Commonwealth... M. Lanning a été nommé directeur...

TV and RADIO listings for various stations and programs.

Maison à louer - For rent advertisement.

VENTE A L'ENCAIN - Real estate sale advertisement.

MM. A. et N. POUPARD, C.P. - Real estate advertisement.

\* LES VENTES \*

Real estate listings and advertisements for various properties and services.

LE MAURICIEN - Newspaper advertisement.



La chute de la maison Usher... Un plaisir pour les yeux...

Trois femmes l'ont aimé

Commissaire Robert Noél... Trois femmes l'ont aimé... Une affaire troublante...

Mauritius Brewers Ltd... Les commandes de Mauritius-Breweries Ltd...

Pathé Palace - Majestic-Plaza... 10. AU ROYAUME DE L'HORREUR...

AVIS... Le registre des transferts...

ROBERT NOEL... Un plaisir pour les yeux...



PETITES ANNONCES

L'Unité dans la diversité... Avis est donné, par ce présent, que le...

The Welfare of the Blind and Prevention of Blindness Society... Members of the Welfare of the Blind and Prevention of Blindness Society...

La loterie de Maurice... Les billets de la Loterie de Maurice...

Muslim Youth Federation... Les jeunes de la Fédération des Jeunes Musulmans...

Mauritius Economic Society... Lower Plateau Wilhelms Branch... Port Louis Branch...

Projected cessation of business... Notice of cessation of business...

Cambridge Certificates... STUDY AT HOME FOR LONDON G.C.E. CAMBRIDGE CERTIFICATES...

WOLSEY HALL OXFORD... Les commandes de Wolsey Hall Oxford...

Les championnats des Ligues anglaise et écossaise

Classement des équipes après les six matches de la semaine dernière... LIGUE ANGLAISE... LIGUE ÉCOSAISE...

Table of football league standings for Division I and Division II.

Table of football league standings for Division III and Division IV.

Table of football league standings for Division I and Division II.

Table of football league standings for Division III and Division IV.

LIGUE ÉCOSAISE

Table of football league standings for Division I.

Table of football league standings for Division II.

Table of football league standings for Division III.

Table of football league standings for Division IV.

Vos Chaussures Durent Plus



LES CHAUSSURES QUI DURENT PLUS... LE CUIR CONTRE L'EAU ET LA POUSSIERE... LE CUIR DE QUALITÉ SUPÉRIEURE...

NOTICE

The public is hereby informed that as from Thursday the 16th December, 1965, the Civil Commissioner's Office and District Council Office of Plaines Wilhelms...

AU PLAZA

'The Government Fire Service' présente 'Firemen Show'...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Et aussi Gérard Lejeune... les billets sont en vente chez...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Les billets sont en vente chez... Tadjouk, André, route Royale, Rose-Hill...

Des chants de Noël

Le 21 MAÏNICH sera cette année un festival pour tout le monde de la paroisse...

Les chœurs seront dirigés par Louis Chabrier et accompagnés par l'orchestre de la paroisse...

Les représentations de ce genre sont très populaires dans les paroisses de l'île...

Les représentations de ce genre sont très populaires dans les paroisses de l'île...

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Les représentations de ce genre sont très populaires dans les paroisses de l'île...



MARTINI VERMOUTH ON THE ROCKS SUPER!

LES VENTES VENTE A L'ENCAN... Autos Triumph Herald de 10 HP et Austin Somerset de 10.6 HP!

Results of the Junior Scholarship Examinations, 1965

- LIST A: BOYS (Government and Aided Primary Schools) Apollon, Siméon (Gouvernement), Raymond (Gouvernement), etc.

ISLAM (Suite de la page 1)

If they do, we shall then present... (Text regarding Islamic community matters)

Mme Evelyn Desvans de Marigny... (Text regarding a social event)

Imperial College FOREST SIDE WANTED FOR 1966 QUALIFIED Teachers (GOOD SALARY)

BOURJOIS... Les Cafés-Paroisses... (Advertisement for Bourjois coffee)

AND ECHOS et rumeurs... (Gossip and news snippets)

Non, Madame, vous ne pouvez pas... (Text regarding a woman's situation)

LES MANCHETTES... (Advertisement for neckties)

DIABLES - DINDONS... (Advertisement for poultry)

AVIS IMPORTANT... (Public notice regarding a lost item)

BEEFEATER BEEFEATER GIN... (Advertisement for Beefeater gin)

Les travaux parlementaires

(Suite de la page 1) Le transport intérieur... (Text regarding parliamentary work and transport)

Success... (Text regarding a success story)

Madame Desvans de Marigny... (Text regarding a woman's situation)

Big V-jets on Fiesta Route... (Text regarding a flight route)

Decédé à Durban... (Text regarding a death notice)

Ex-Service Association of Mauritius... (Text regarding an association meeting)

AGENDA... (List of upcoming events and meetings)

La base de Diego Garcia

(Suite de la page 1) Le chef d'adjoint de l'opposition... (Text regarding political news and Diego Garcia)

La question de compensation... (Text regarding compensation issues)

Session d'étude de la Cateches... (Text regarding a study session)

AGENDA... (List of upcoming events)

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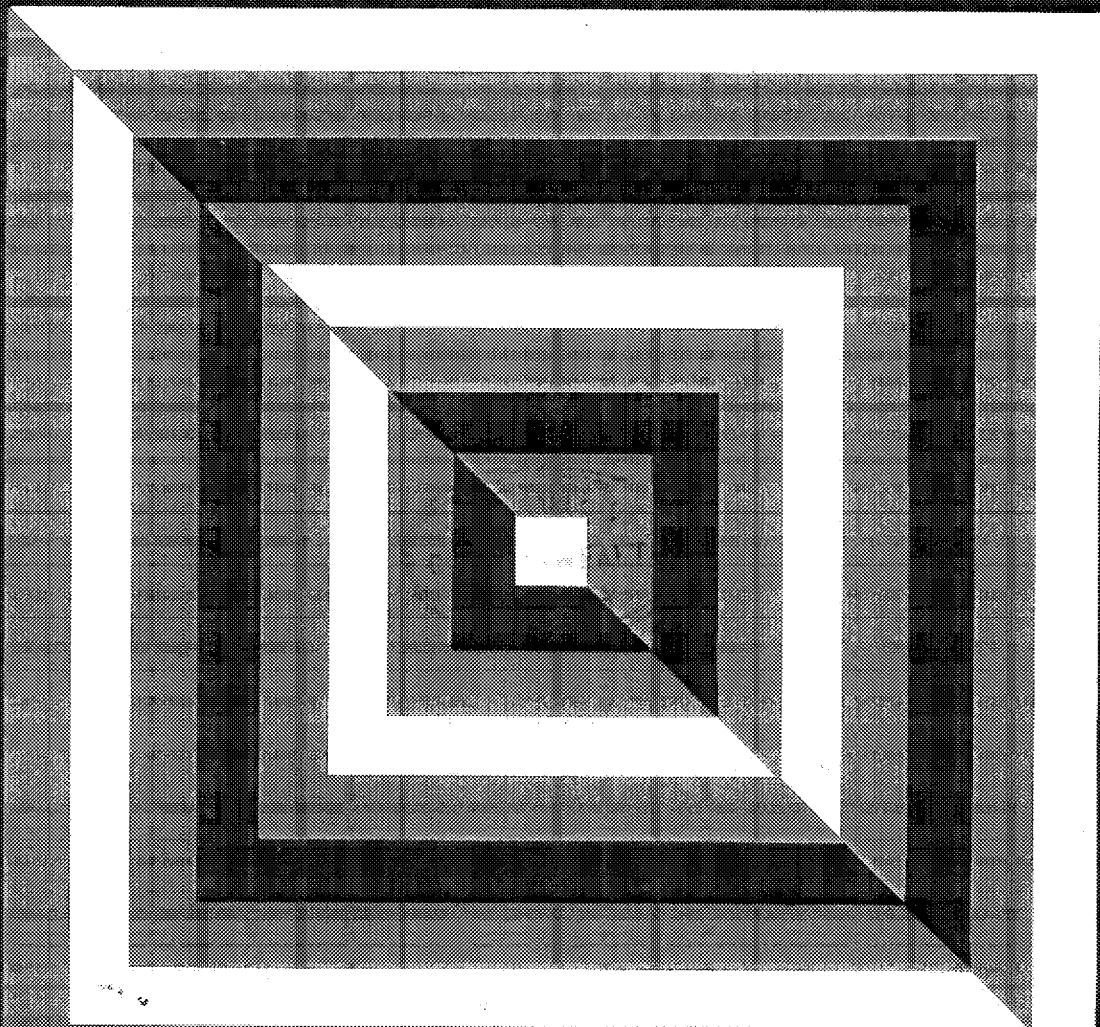
AGENDA... (List of upcoming events)

AGENDA... (List of upcoming events)

## ANNEX 99

Sir Seewoosagur Ramgoolam, *Selected Speeches* (1979) (extract)

# Selected Speeches of Sir Seewoosagur Ramgoolam



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1968

## Independence Day

On this historic occasion my heart is full of joy and emotion. I know that I am echoing your own thoughts when I say that all of us, in a spirit of unity and solidarity, are determined to go forward and work together for the welfare and happiness of our people.

But before I go any further, I would like to say that I feel very grieved today that many of the comrades who were with me in this battle for independence, are with us no more. I mean my friends like Anquetil, Rozemont and Seeneevassen who, after fulfilling the purpose for which they had worked so hard, passed away leaving the torch to others.

Today we are dedicated as a nation to the ideals of peace and brotherhood and it will be the constant objective of my Government to ensure that every Mauritian, no matter his creed or class, enjoys the privileges accruing to him as a citizen.

As we open a new chapter of our history we shall always remember that we are the inheritors of a great tradition which is vested in the very history of our land. The daring and valour of our seamen, the creative imagination of the early colonisers, who included men and women from all the continents, the hardy patience of those legions of workers whose efforts have enabled us to reach our present position, the respect which we have always shown for democratic principles, our love for justice and liberty, these will be the guiding lights of our national policy.

We are also conscious of the fact that we are living in a technological age and the great scientific strides which have been made in recent times should enable us to grapple with all our problems with hope and confidence. It is in a full acceptance of those scientific values that contemporary society can find a solution of the major issues now facing us.

I give you the assurance that the Government which you have elected does pledge itself to carry forward the task that you have entrusted to us. We have an unshaken faith that our countrymen will be able to rise to the challenge of their great destiny.

I am deeply grateful to the people of Mauritius who have made it possible for our country to take its rightful place in the comity of nations as a sovereign democratic state. My wish today is that of all true patriots who believe in the future of Mauritius. Let us all work together, for the country belongs to all of us; and let us contribute our share in the building of a strong, free and happy Mauritius.

*12th March, 1968*

1974

## Sixth Anniversary

On the sixth anniversary of our Independence I have again the honour and privilege of addressing you and offering you my warm and sincere greetings. This is a great date in our history and for all Mauritians it is a day of joy and happiness.

I should like to say a few words about the State visit of His Excellency Dr. Julius K. Nyerere, President of the United Republic of Tanzania. The President arrived yesterday and you have already given him a warm and rousing welcome. Dr. Julius Nyerere is not only a close friend of mine but of the whole of Mauritius, and he has played a laudable part in the achievement of our freedom. I am glad that this visit is welcomed by the leaders of all political parties, and I am sure our people will preserve fond memories of the short stay of this great leader of Africa who has been of yeoman service to mankind.

Six years of independence are only a short period in the life of a nation, but during that time momentous changes have taken place in our lives. We have recovered our human dignity and our soul and have come face to face with our destiny.

During these years, as indeed ever since I entered politics, my aim has been twofold. First the Government and I stand committed to work for the weak and the underprivileged in their struggle for social, political and economic justice. At the same time, I am convinced that such a struggle can only be waged with a good chance of success in an atmosphere free from tension and resentment. Peace and stability are the prerequisites of progress and advancement. Violence and intolerance anywhere, and more so in a small country like ours, will throw up more problems than they will solve. Violence and intolerance will inevitably lead to a halt in our continued and well-ordered social and political progress.

We are now well set on the path of success and the country knows that in a multiracial society like ours we must forge unity out of diversity. This must always be an essential part of our national policy. It is essential to our national prosperity and the happiness of our people. Independence has ceased to be an issue dividing one Mauritian



from another. We have come to treasure it as the greatest achievement of the country and to honour and venerate the flag which was born out of the sacrifices of our people.

This country and its leaders must always be in search of a realistic programme which will contribute to our economic and political survival in a world in which democracy is being assaulted by fascism, subversion and narrow nationalism. All these are rooted in selfishness and greed for power without any concern for the mass of the people from whom we derive our strength.

Today our social democracy is in danger of being subverted by men who believe in the cult of violence and these social misfits are lifting up their heads with the hope that they can hoodwink even an enlightened people. So we must be vigilant; that is the price of liberty.

Mauritius is on the march, and we must not throw away the substance for the shadow. Our socialist policy has enabled us to bring this country to a prosperity unparalleled in our history and to bring about a much wider distribution of national income than ever before. The price of sugar, the accelerated industrial development with the creation of the free zone, and the increases in wages and salaries bear witness to our performance since Independence. Let no one decry these positive gains. The whole country is humming with activity. This economic and social development can only be sustained by the joint efforts of all members of the community. We appreciate what an important contribution private employers and their workers are making. The Government too is doing its share. This is why last year the Government bought the Rose Belle Sugar Estate, opened the State Commercial Bank with the express purpose of assisting the small man to set himself up in productive self-employment and set up various para-statal organisations. The Development Bank of Mauritius and the Bank of Mauritius have already cleared the way for a new era in the financing of development projects.

By far the Government's most important contribution in raising the quality of life in this country is the Rural Development Programme, which is meant to provide the people living in the remote rural areas with electricity, adequate water supply, recreational centres and roads. The Rural Development Programme is development from below instead of from above; the villagers themselves take a full active part in the productive process. Although it is only in the first phase of its programme, which will eventually cover the whole country, it is already assured of success.

In 1971, when we launched our Four Year Development Plan, unemployment was at its peak. In the same year we began the "Travail

Pour Tous" programme, which has been entrusted to the Development Works Corporation. This has created more job opportunities in manufacturing and the tourist industry, and by this and the Rural Development Programme, our unemployment has been considerably reduced. In fact, the results obtained from the implementation of our Four Year Development Plan, which is now running in its third year, indicate clearly that our objective of creating one hundred and thirty thousand jobs by 1980 is within our reach. We have made a noticeable reduction in unemployment, and we are going ahead to make work available to all our people.

However, more than that is needed to bring about changes in our pattern of life. I think that our educational system is in need of a radical overhaul. We should give a more privileged place in the schools to manual work, to science and to technology. I would like to see that in each primary school children are taught the rudiments of agriculture and are especially taught to respect the man with the hoe. I also want a close association of all our secondary schools with agriculture and industrial growth so that each young boy and girl is given the opportunity every year to spend some time alongside our workers and artisans. I am pinning my hope on our teaching profession and on the Mauritius Institute of Education to bring about this desirable transformation. We want the schools to train our young people to take advantage of every opportunity to develop their tastes, their judgement and their critical sense, so that they may adopt positive attitudes and exploit their creative potential. Our national development depends essentially on whether we are successful in this endeavour. There cannot be any worthwhile development unless it springs from within.

This concept of development implies international cooperation. You all know that our policy has always been to entertain good relations with all countries of the world in a spirit of equality and mutual respect. We have established solid ties of friendship with countries throughout the world. As we continue our negotiations with the E.E.C. for a guaranteed quota for our exports, I think we can rest assured of the understanding and assistance of our European friends. Since sugar is our main export, our first objective is to ensure that the E.E.C. grants us a reasonable quota at a remunerative price.

When all is said and done, however, we should focus all our energies on the advancement of the interest of Mauritius. Should this mean the abandonment of certain high principles without which no country can morally survive? I do not think so. I believe, and I am sure that the vast majority of my countrymen agree with me, that there cannot be any compromise on the issues of colonialism, of racialism and of

domination. We belong to OCAM, and to the OAU. In other words, we belong to Africa, without in any way wrenching ourselves away from India and Europe. We intend to give support to our African brethren in their efforts to secure the full emancipation of the peoples of that great continent. We cannot be free if any of us remains in bondage.

While on this I should like to say that we look with concern on the building up of the naval strengths of the big powers in the Indian Ocean. There are even rumours of a naval base at Diego Garcia, which Mauritius gave up prior to its Independence. The countries bordering on the Indian Ocean, with Mauritius in the centre, do not wish to see nuclear warfare in this part of the world. We want the Indian Ocean to be a zone of peace. The big powers have in the past made a holocaust of much of the world. They should let us live here in peace.

The task of Government, unhappily, is not simple. It appears to be made up of conflicts and contradictions; if one problem is resolved, another springs to the surface begging for solution. Our economic boom has been accompanied by unprecedented inflation. Part of this inflation comes from an increased internal demand due to rising expectations among the mass of our people. The bulk of the inflation is none the less imported. To add to that, the oil crisis has sent the price of fuel rocketing throughout the world.

If inflation and a rising cost of living are world phenomena, it remains none the less true that they are problems which must be a major preoccupation of the Government in Mauritius. We have already taken a number of steps to mitigate the effects of inflation. These include a substantial increase in wages and salaries all round, restriction on bank credits, increased subsidisation of rice and flour, removal of customs duties on a variety of essential commodities and certain checks on profiteering and hoarding of goods.

*12th March, 1974*

1977

## Ninth Anniversary

Today the Mauritian nation is nine years old. On this auspicious day I am happy and proud to be able to offer all our countrymen warm greetings. I pray to God that our future may be as bright and glorious as the recent past has been.

We are now ready to begin with confidence the second, more challenging stage of our journey, towards our cherished national goal—a harmonious social order, based on justice and enriched by our composite culture. It is my earnest belief that the second stage of our journey will be even more exhilarating than the first.

In spite of many obstacles, most of them originating from our colonial legacy, we have succeeded in shaping a new social and political order, in which freedom and welfare have been well enshrined and fair opportunities have been ensured for everybody.

These nine years have been years of crisis: we have been faced with stagnation in world economic affairs, and with mistrust and tension in the social field at home. All our economic policies over these crucial years were designed to meet this crisis. They have succeeded in creating conditions of harmony and stability on the one hand, and creative endeavour and hope on the other. Mauritius has reached a high level of prosperity which is not confined to the few top layers of society as in the dark colonial past, but is spread over the larger part of the nation. Naturally, those who had less have received more; those who had been left behind in the race have been specially helped to garner more from the national harvest of prosperity. This process of equalization is gaining more and more momentum.

As we look back over this first decade of freedom and of ceaseless work, we can see several important landmarks that betoken our success against hard odds.

Let us first talk of our attack on poverty. The most serious scourge of the period of dependence was acute unemployment. We have launched a frontal attack on this problem, first by providing work for all and then by creating permanent jobs in the newly created manufacturing and industrial sectors. Thus we have set in motion

the process of illuminating every home with the hope of earning an honourable livelihood. That is real independence, the freedom to be master of one's destiny. Our policy has brought about rapid increases in family incomes, and those in turn generate economic recovery and progress. There are now greater numbers of earning hands bringing home more and more money to help educate their children and improve their living conditions. Thus, one single national policy has spurred a silent revolution changing the face of Mauritius.

The second impressive landmark is the nation's success in meeting the challenge of nationhood, and sustaining the healthy process of homogenisation, which began when people from various continents, belonging to various faiths and cultures, were born to live together in one island. We rejected the pernicious concept of racial superiority and discarded sectarian temptations. We evolved a truly multi-national pattern of shared responsibility and this has helped to bring about the emergence of one nation instead of opposing groups, as has been the tragic fate of some of our other brethren in Africa and Asia.

This was not easy. The process of fusion and national consolidation was often threatened by forces exploiting ethnic factors. But the people quickly discovered that the real issue was not race, religion or colour but freedom, opportunity for the common man, social justice. Our wise peasants and hardy workers knew that slogan-shouting sectarian groups were seeking narrow political advantage, largely for themselves, and that they would never usher in real social democracy without which colonial domination could not be ended. Our people can always see through the sterile extremist slogans.

During these last nine crucial years, our people have been convinced of the importance of freedom. They realise that freedom alone can bring an end to injustice, and the exploitation and domination of man by man. It is these people—the agricultural workers, the artisans in the factories, the fishermen toiling at sea, the doctors and nurses who heal, the managers and civil servants, the teachers who are moulding the minds of the younger generations, the dockers and the stevedores who keep the harbour functioning efficiently—who are consolidating the foundations of independence and shaping the future, who deserve our thanks. To them all, I offer my warmest greetings. It is their cooperation that I invoke today so that the second stage of our journey may be equally successful.

Having won our independence through sacrifice, we cannot allow it to be eroded or destroyed. Our national unity, which has emerged out of the crucible of political struggle of four decades, cannot be allowed to be damaged. There must be no going back, only going

forward. Today is a day of rejoicing, but it is also a day of dedication.

The third and perhaps the brightest landmark in our first decade is our economic growth. On Independence Day, 12th March, 1968, a new and powerful creative force breathed a new spirit into the body politic and people felt that they were not going to work for foreign masters but for themselves, their families, their community and their country. Before independence there were few industries; today there are one hundred and sixty-six, offering gainful employment to over twenty thousand men and women of independent Mauritius. The national wealth is growing year by year and is being distributed in the shape of increased wages and social benefits to still larger numbers.

What is the secret of our remarkable success? Without the slightest hesitation I would say, national unity, a clear sense of national objectives, a pragmatic approach to problems in opposition to doctrinaire attitudes, a fair share of the national wealth for every one and above all, peace.

Peace, for us, has always represented a dynamic reality, stimulating change. That is why we have moved ahead of other Asian and African nations. Take education. We were not content with free primary education and the old pattern of scholarships, which no doubt had helped reduce inequalities. We are now providing free secondary and university education because we wish to move faster and bring real equality to the door of every Mauritian. Or take a free National Health Service, which will put at the service of the population free medical care over and above the high grade specialist services that the hospitals already provide. There is hardly any Asian or African country which has introduced such welfare services of long term benefit to the people.

Again, take the National Pensions Scheme with its wide range of pension benefits for all categories of needy people, or the nationwide Social Insurance Scheme for workers, which will further guarantee that nobody is left unprovided for.

Our policies have promoted the people's welfare because we have always believed that democracy is real and secure only when all people are safe from distress and loss of self respect. I take great pride in the fact that Mauritians, who have worked hard for over two centuries, deserve it. Indeed they deserve the best and the best they shall have, now and always; the best roads, schools, institutes of learning, or hospitals—indeed, the best of anything which makes the life of the common man more enjoyable and worthwhile.

Our achievements in the field of external relations have been equally impressive. We respect the independence of nations and are firmly

opposed to colonialism and racialism. We take pride in giving support to the struggles of our African brethren who are still striving for their emancipation. It is my fervent wish to see this year the dawn of Independence in Zimbabwe and Namibia and the end of abhorrent apartheid in South Africa.

Jealously guarding our sovereignty and independence, we have been firmly committed to the principle of non-alignment. This policy has earned us friendship and respect in the world. We have forged strong links of friendship and cooperation with Asia, Africa and Europe, and with the Arab countries. All this is promoting our rapid economic development without compromising any of our basic political principles. Freedom with Honour we fought for, and Freedom with Honour we enjoy today.

In the journey ahead, we are bound to face difficulties. The biggest danger it appears to me is the attitude of cynicism and self-denigration which comes to the surface every now and again. There are voices of doubt and despair which want to smother the confidence of our younger generation. I hate self-complacency, but I regard self-denigration as deadly. I appeal to the nation and youth, in particular, to keep their eyes open and to ponder on the meaning of the independence we are celebrating today. I ask you not to fall a prey to the cynicism of those who wish to sap the nation's will to succeed in its tasks.

To stimulate multi-faceted economic growth in many directions, in a world in which competition is becoming ever fiercer, we must pursue with greater vigour our programme of diversifying our agriculture and expanding our industries with the participation of local and overseas investors. Our sugar industry is one of the best in the world. Yet there is scope for improving the yield from our smaller farms. Our motto should be Higher Production in every sphere, for unless we increase our productivity we can have no prosperity.

Our second plan for social and economic development, which is now being implemented, aims at further strengthening the economy, creating more jobs and producing more national wealth, to be still more equitably shared within our "grande famille Mauricienne".

There are signs that we, like other developing countries, may be confronted with some new problems. We are aware of these, and we have the competence to deal with them as we have done in the past. I am very proud of our workers, proud of the great sacrifices they have made. They are never dismayed by the self-denigration of pseudo-intellectuals; they will fight and win. Our resources, the most valuable being our man-power, can still yield the wherewithal of continuing prosperity. Bigger tasks demand bigger efforts. I have never doubted

that we shall cast our differences aside and work together; our democratic system allows us the greatest scope for doing so. In spite of our occasional differences of approach, there cannot be any difference of opinion on our fundamental national objectives—the greatest happiness of the greatest number in peace, harmony, order and stability. I believe that we have the necessary political maturity and commitment to national objectives to ensure that our progress is not imperilled.

We have indeed come far in the first decade of freedom. We have achieved in a short time what many better-provided for and better-placed countries are still trying to secure. We have introduced great programmes of family welfare. I have dealt indirectly with inflation and unemployment. I should like to emphasise here that we have successfully curbed inflation and broken the back of the unemployment problem. The recent fiscal measures announced by the Government will further strengthen our economy and enable us to continue our social and economic progress.

It has been an exciting journey full of challenges but followed always by fulfilment. We begin today yet another journey in a mood of heightened self-confidence. Let us steer clear of hidden dangers and sail boldly on to a glorious future.

Long live Mauritius.

*12th March, 1977*



1968

## Admission to the United Nations

Mr. President, I should like to express to you and to all the distinguished representatives, my cordial thanks for the admission of my country to the United Nations. My special thanks go to those Member States which have so generously sponsored our application for membership. It is gratifying to acknowledge the wide response and welcome Mauritius has received from Members of the United Nations. By this act you have given formal consecration to the accession of Mauritius to the status of a sovereign independent state. Although I come from a small country, my Government and the people of Mauritius are very conscious of the honour of belonging to this great Assembly, and we can assure you that we shall strive to uphold the great ideals which are enshrined in the Charter of the United Nations and will play fully our part in the struggle for justice, racial equality, peace and understanding among nations.

This is indeed a solemn moment in the history of my country. I stand here in all humility, in the midst of this great world community, as the symbol of my people's hope that through the effort of the United Nations mankind will really see the ultimate fulfilment of the principles and purposes to which men and women in this august Assembly have dedicated themselves. In that grand and noble endeavour, we as a small nation will bring our contribution, however modest it may be, to the shaping of the destiny of a better world, of a new and broader world civilization in which man's essential needs will transcend considerations of national self-interest.

I also bring to you, Mr. President and distinguished representatives, the greetings and good wishes of my country which after successive periods of colonisation by the Dutch, the French and the British, is now looking forward to an era of fruitful collaboration and partnership with all nations.

Mauritius has a rich historical background and in the past it has

played a notable part in some of the great events which have moulded the course of history. Mauritius is a densely populated island, and over an area of seven hundred and twenty square miles lives a population of almost eight hundred thousand. It is a view held by some scholars that our island was visited by Dravidian seamen in pre-Aryan days, and during the time of their great awakening, the Arabs sighted Mauritius in the early part of the Christian era while plying between India and the Red Sea.

However, it was the Dutch who took formal possession of the island in the seventeenth century, and gave it its present name. But colonisation proper was started in earnest by the French who succeeded the Dutch, and France has left its lasting imprint on the history of Mauritius. Such indeed has been the impact of French culture and civilization on the life of the people that even those who came from other lands have been profoundly influenced by it. The meeting of the peoples of Asia, Africa and the West in Mauritius has enriched our precious heritage, and as I said in France during my last visit: "Sovereign Mauritius will ally itself still more closely with France, as with the other countries from which our forefathers came. Thus this remote island in the Indian Ocean will become one of the most important meeting places of East and West."

Towards the end of the Napoleonic Wars, in 1810, Britain conquered Mauritius. Because of the island's proximity with India, Mauritius was captured from the French with the help of Indian troops from Bengal, Madras and Ceylon. British power in the Indian Ocean became supreme after the annexation of Mauritius to the British Crown and British rule was to last until the accession of Mauritius to Independence on 12th March, 1968. In the course of the European colonisation of Mauritius, people from Africa and Asia came to its shores and they have all played a decisive part in the progress and development of the island. Ever since, the people of Mauritius have been trying to promote the maintenance of contrasted cultures within the framework of a wider community to which each group could contribute its own share.

It is indeed true to say that although Mauritius has drawn its cultural inspiration from Africa, Asia and Europe, yet it has succeeded to a remarkable degree in evolving a distinct Mauritian way of life. The visitor to Mauritius is impressed by the fact that on the whole, Mauritians have more in common with each other than with the native inhabitants of the lands of their forbears. Indeed, it has been the privilege of my small country that its citizens have inherited the influence of the best traditions of the East and of the West. And this

influence is noticeable in the works of our poets and writers, as has been pointed out by many speakers who have preceded me.

I spoke a little while ago of the basic principles of the United Nations and of its work for the oppressed peoples who have been struggling for the recognition of their rights to nationhood. We are all here pledged to this great ideal, and indeed all Member States have been working with great fervour and dedication to achieve these great ends. In many areas of the world, hatred and violence and denial of human rights are still raising their ugly heads and human beings are being subjected to segregation from one another because of the colour of their skin or their way of life. It is a statistical fact that more than half of the world's population is forced to live in conditions where human dignity and social justice have hardly any meaning. Even in some of the progressive countries which have been the bulwark of democracy, men of goodwill are constantly trying to find a formula by which inequality and fear can be banished, and the under-privileged can aspire to a place in the sun.

We in Mauritius have a long tradition of mutual respect, tolerance and understanding, despite the occasional evil exploitation of our diversity. Our social customs and habits have transcended racial and cultural differences. Although much has been achieved in the past two years in the field of economic and social development, Mauritius, like other developing countries, is bedevilled by the rapid rate of population growth. As a sequel, unemployment is a cause of great anxiety, for the rapid increase in the birth rate is a constant threat to our present standard of living. We are taking steps to contain this serious population explosion, and to counteract it a comprehensive programme of family planning is being launched.

Fully conscious of the seriousness of the problem, the Mauritian Government has embarked on the diversification of our economy. Great efforts are being made to stimulate the production of tea, tobacco and food crops, and a number of manufacturing industries have been set up. We have also been giving careful consideration to the possibilities of emigration as a means of easing our unemployment problem. In this respect I am glad to say that a large number of Mauritians who have emigrated to countries like Britain, Australia and Canada are actively contributing towards the development of those countries. I should like to add that Mauritian workers are efficient, intelligent and adaptable, and have proved to be an asset to those countries which have welcomed them. We all know that there are yet many large areas of the world available for settlement, whereas in Mauritius and other territories there is a serious surplus of human

resources. It is in this vital task of revolutionising the social and economic set-up of Mauritius that my people are looking forward to a close and fruitful partnership with Member States of the United Nations.

Here, with your permission, Mr. President, I should like to avail myself of this opportunity to express the gratitude of my Government and my country for the assistance that has already come to us from these quarters and the various United Nations agencies; and I might add in this context how deeply indebted we are to countries like Britain, France, India, Canada, Australia, New Zealand, the United States of America and Pakistan, which have sympathised in a practical way with the problems we have been facing.

We fully realise that economic stability and world peace depend very much on the understanding between individual groups within a nation, as well as in the field of international relations, and on the success which countries achieve in their efforts to give a reasonable standard of living to their populations. It is in this great task of bridging the gap between the rich and the poor that we join our efforts with other Member States forming part of this Assembly.

To conclude, allow me on behalf of my delegation and my country to renew our pledge that we will carry out our obligations under the United Nations Charter and will stand by the great principles which inspire this great world assembly in its pursuit of peace and happiness.

*24th April, 1968*

1969

## United Nations

Madam President, first let me join with other delegations and offer you my warmest congratulations on your election to the high office of President. This is a tribute to you, to your country and to the whole of Africa which you have served with so much distinction and devotion. You are the second distinguished lady to assume this high office and I am confident that your experience in public affairs and your loyalty to the cause of freedom, justice and world peace will be an asset in the deliberations of this Assembly.

I should also like to express my grief and sorrow at the death of the former President of this Assembly, Mr. Emilio Arenales, to whom we will all remain indebted.

In a world of so much goodwill and understanding, where people can live in freedom, peace and plenty, it is a paradox that in the Middle East, in Vietnam and in Africa there are interminable conflicts bringing ruin and misery in their trail to millions of innocent human beings. It is in the interest of all nations that these conflicts come to a speedy end. On the war in the Middle East my country abides by the resolution of the Security Council, which provides a sufficient basis for negotiations for an honourable settlement between the United Arab Republic and Israel. As to Vietnam, let us all hope and pray that better counsels will prevail, putting an end to a most bitter and fratricidal war. But peace in those regions cannot come by itself, and the big Powers like the Union of Soviet Socialist Republics and the United States of America should make fresh attempts towards peace.

Mauritius, which has been a Member of the United Nations for only about eighteen months, has pledged its unreserved support to this world organization in its efforts to bring about freedom and justice among all nations.

It is felt at times that the United Nations is not doing enough towards peace in the world or that it is moving too slowly in that direction. No human venture can be perfect, and one must not be over-critical. In all fairness, it would be no exaggeration to say that if there had

been no United Nations twenty-four years ago the whole world might well have been plunged into chaos.

I should like here to place on record our thanks for the magnificent work done by the Secretary-General, U Thant, who has unceasingly striven to end all racial and political conflicts.

The Charter of the United Nations will stand in history as a great monument of human endeavour. The twenty-fifth anniversary of the United Nations next year should project the message enshrined in the Charter and make more widely known, especially to the younger generation, the numerous activities of the United Nations and its family. All efforts in that direction have been warmly supported in my country, and it is our earnest hope that this increase of knowledge everywhere will serve to open the eyes of many in this era where interdependence is no longer a metaphysical concept, but a reality. The objective of universality which is one of the main goals of the Charter must not be overlooked, and in the case of China, for instance, my delegation is of the view that the Chinese mainland, represented by Peking, should take its rightful place as a Member of the United Nations, but not to the exclusion of Formosa, which also has a right to life as an independent nation. That is why Mauritius abstained on that issue at the twenty-third session of the General Assembly. We feel that both the mainland and Taiwan should be represented in the United Nations. It is our hope that a solution will soon emerge.

Madam President, the name of your country (Liberia) suggests freedom and liberty. It is therefore fitting that you should be in the chair at a time when we are preparing to celebrate the tenth anniversary of the General Assembly resolution embodying the Declaration on the Granting of Independence to Colonial Countries and Peoples. Without being over-critical of our friends who have been great colonial Powers, we regret that there are many nations in the world still under colonial rule with its degradation and economic and social backwardness. Colonialism has always been tied up with social injustice and racial discrimination, which today has come to endanger world peace. In many nations, the concept of co-existence, which in our country is a reality, and which we have always advocated, does not seem to have a place.

The apartheid régime of South Africa, for instance, is repugnant to human dignity and can only foster hatred and unrest. Man must be free, and my country unreservedly condemns any form of society that denies human beings their basic rights. The illegal régime of Southern Rhodesia is another glaring example which has deeply aroused the conscience of the civilized world. Mandatory sanctions which have

been applied have not succeeded because the colonial Powers in the immediate neighbourhood have refused to cooperate.

The case of the territories under Portuguese administration is another grave concern to Africa and there will always be misery and loss of human lives as long as colonial rule persists.

Still, in that same area where colonialism is fighting its last stand, we have the case of Namibia, which used to be called South West Africa. The responsibility of the United Nations as a successor to the League of Nations cannot be evaded, but it is also the duty of all of us here to lend our support to end this trespass by South Africa so that Namibians may finally breathe in freedom and peace.

These to my mind are the main currents of colonial policies adopted by many powers. Why do they not want to withdraw gracefully from the territories they have occupied for centuries? At times it was advanced by them that the peoples of those territories were not ready to assume independence; at other times it was said that those territories were economically backward and not viable. On either ground, they have forfeited their right to continue to maintain their rule because after centuries of colonial rule they have failed on all counts.

Colonial Powers should no longer invoke the principle that the affairs of territories under their rule are purely their internal affairs. The time has passed for such a concept, and they should voluntarily divest themselves of their political rule without necessarily impairing their cultural links.

It is our belief that the United Nations machinery could help towards a smooth transition to freedom in those countries, but new ways and means of doing so will have to be found.

It might be suggested, for example, that the Trusteeship Council, over which you have so ably presided, Madam President, could be given a new form of life and activity. Bringing these colonial territories under the protective wings of the Council and preparing them for their independence would give to one of the principal organs of the United Nations a new *raison d'être*.

We have always adhered to the principle of self-determination, but we must not overlook the basic fact that the exercise of this fundamental right must be free to be effective and fruitful; for it is almost impossible for a slave to vote for his own freedom. Colonial Powers, for the preservation of their rule, divide the countries under their jurisdiction horizontally and vertically, thus making a free choice by the people a farce. Freedom is indivisible, to my mind, and one does not vote for one's freedom with a rope around one's neck. A nation should assume freedom without any limitation.

I shall now turn to another subject which is of the highest importance in this century, and we are grateful to the delegation of Malta, an island like Mauritius, for raising this question of the sea-bed and the ocean floor. The ocean is a vast expanse and great patience and perseverance are needed, since so many nations seem to have different views on the subject: for instance, views range from three miles to two hundred miles on the exact line of the ocean floor which lies beyond the limits of territorial jurisdiction. The immense potential of cheap nutritious food should be made available to all nations in order to supplement their requirements. The vast ocean bed should be exploited for the benefit of all mankind, and not merely for the benefit of those powers that are in a position, either technologically or economically, to exploit its abundant mineral, animal and vegetable resources. It is also to be remembered that the exploitation of the sea-bed must be essentially for peaceful and not for military purposes. I therefore appeal in a most earnest manner to the industrialised Powers to lend their support to the progress of the work of the sea-bed Committee.

Linked with that is the question of human environment. We are very grateful to Sweden for having brought that very important problem into the limelight.

I now come to the problem of economic and social development, which occupies the attention of all nations. The First United Nations Development Decade is now almost over, and preparations for the second one are under way. Mauritius welcomed the proposal of last year's session of the General Assembly to set up a Preparatory Committee for the Second United Nations Development Decade to elaborate a strategy of development for that decade. As a member of that committee, Mauritius has participated actively in its work, and very soon the first interim report will be presented to the Assembly.

The first decade has not fulfilled everyone's aspirations and it is to be hoped that the second one will bring us nearer to the goal we all have in view. Otherwise, the divisions between the third world, to which we belong, and the rich countries will continue to increase. The gap between the developed and the developing countries must therefore be bridged or at least considerably reduced at all costs to avoid further frustration.

It might also be helpful if at this stage I were to remind the Assembly of a few basic problems facing the developing countries. First of all, most of our economies are based on trade in primary products. In the case of Mauritius, it is cane sugar, of which we are one of the oldest producers. Unless we obtain a better quota and a remunerative



price for our product, we cannot hope to survive. This is also true of many other countries in many other spheres. The need for commodity agreements made itself felt a few years ago, and developing nations will welcome a stabilisation of prices in order to plan their economies ahead instead of relying on aid, which at times is not forthcoming.

Another serious problem confronting developing countries like Mauritius is the demographic explosion, with which is also associated large-scale unemployment. We believe that the doors of countries which do not have over-population problems and which, on the contrary, lack man-power, should be opened to emigrants from the over-populated areas of the world. Population mobility should be increased and must not be confined to a particular race or colour.

Another need of the day is intensive diversification of agriculture to provide additional employment to people seeking work. The United Nations must undertake proper economic and social surveys in order to determine the available potential resources, both human and material; and economic organisations such as the World Bank should finance the implementation of such findings, for the developing countries themselves are not in a position to provide all the funds essential for their development. We all know that developing countries find themselves in great difficulties over the financing of their projects for economic and social development.

The World Bank is doing fine work, but its loans cover only certain projects which it considers viable and which would give sufficient returns; developmental projects therefore become restricted because of the high rates of interest. More soft loans are required to build up the infrastructures or to carry out projects which can be productive only on a long-term basis. It is unfortunate, however, that this kind of financing suffers from a paucity of available funds. Richer countries should therefore contribute more towards such organisations as the International Development Association so that more financial resources may be made available for that category of projects.

On the whole, therefore, in the decade to come we should expect from the developed countries more commitments derived from a political will; in return, the developing countries, including Mauritius, will be in a better planning position to obtain the optimum results from their natural resources.

There is another matter, relating to the younger generation, which I feel it my duty to mention here. The state of unrest among today's youth is symptomatic of a sense of frustration. During the twenty-third session of the Assembly, Mauritius was one of the co-sponsors of a resolution requesting a study of the education of youth, and recalling

the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples. The youth of today will be the leaders of tomorrow. It is therefore the duty of all the states of the world to help towards a fuller participation of young people in the different spheres of society.

Those are some of the points which have occurred to us and which we submit for consideration by the United Nations. I am confident that in an atmosphere of better understanding there will emerge more friendliness among nations. We all, as Members of the United Nations, have a duty to perform and we must all participate so as to demonstrate clearly that human brotherhood is not a mere phrase. The whole United Nations family, working in a better spirit of cooperation, may then fulfil our most earnest hope that the day will come when man will be one and peace will prevail.

*25th September, 1969*

1970

# The Commonwealth Sugar Agreement

*The Commonwealth Sugar Agreement was signed in 1957. A description of its terms can be found on page 71.*



Since we returned from our visit to the Common Market countries, the Government think it is their duty to have a debate on the subject.

Negotiations are expected to start within the next few months about Britain's entry into the European Economic Community. One of the major problems to be faced in these negotiations is that Britain has long established trade partnerships with planned producers of foodstuffs such as New Zealand. The Common Market on the other hand has a surplus of many foodstuffs and protects its producers from competition, from imports from third world countries, by means of a levy to bring the world price up to the level of the community price. One of these commodities is sugar. Our problem (like that of other Commonwealth sugar producing countries) is that if Britain were to enter the European Economic Community without modification either of the Treaty of Rome or the Community's agricultural policy on sugar, Mauritius would lose her most important export market.

Assurances have been given that the interests of Commonwealth sugar producers will not be neglected. British sugar policy rests on a balance between domestic production and imports from the Commonwealth with a small margin left open for supply from the free market. Mauritius at present produces an average of nearly seven hundred thousand tons of sugar. We have a quota of about six hundred thousand metric tons. We export a Negotiated Price Quota and this is our main export. In 1968 we earned about eighteen million pounds sterling or just over eighty percent of the total value of this sugar export.

If Britain enters the European Economic Community with no modification of the common agricultural policy there can be no stop on the movements of sugar from Europe into Britain or from Britain into Europe. Since there is already a surplus production of sugar in Europe, it is inevitable that it should flow into Great Britain. Great Britain has been steady in her production except I think in 1964, before the election. Great Britain will not ask her farmers to grow more beet sugar for the Common Market. All Commonwealth sugar exporting countries are dependent, as we all know, on the Commonwealth Sugar Agreement for a considerable part of their export and for their currency earnings. A free market in sugar is residual; only about one eighth of the world production of sugar is sold on the free market. The rest is protected by either domestic or preferential marketing arrangements. The price on the free market bears no relation to the cost of production. Although a new international agreement has been successfully negotiated and all Commonwealth Sugar Agreement countries worked for this and have joined it, the new agreement cannot alter the residual nature of the market and thus cannot be a substitute for the Commonwealth Sugar Agreement.

The essence of the Commonwealth Sugar Agreement is a guarantee of continuing outlet and of price. Any negotiation with the European Economic Community which did not provide equally valid assurances on outlet and price would not only diminish the market for Commonwealth sugar but would also subject such outlet as was left to fluctuating and residual prices. This could not be made good by aid programmes. International aid could provide no substitute for a viable sugar industry. It could not remedy matters if sugar countries were forced back to the situation which existed before the signature of the Commonwealth Sugar Agreement.

Nor should it be suggested that aid could be used to diversify the economies of developing countries, out of sugar. Sugar will continue to be the backbone of our economy. It is a cyclone resisting plant, grows well in Mauritius and gives work and a living to a large population.

If Britain enters the European Economic Community, the only way to protect the Commonwealth sugar industries and our own balanced sugar economy is to write into the conditions of accession the essentials of the Commonwealth Sugar Agreement, namely a long term guarantee of market for specified quantities at reasonably remunerative prices. The British Prime Minister recognised the position on the 2nd May, 1967 when he announced to the House of Commons the Government's intention of applying for entry to the European Economic Community.

Mauritius depends for more than ninety-six percent of its export on sugar. It was our purpose to ensure that none of the parties to the forthcoming negotiations between Britain and the Six was left in any doubt as to those facts and as to the need to make arrangements for Commonwealth sugar producers, especially for developing countries like Mauritius, to continue to find an outlet for their sugar at a reasonably remunerative price. It was wise for us to go and explain our position and we succeeded in the immediate task that we had set ourselves. We worked like a team and did everything in an atmosphere of goodwill and understanding.

We want to make a case for the Commonwealth Sugar Agreement in common with all our Commonwealth partners, emphasising our special case as well. We want to remain a compact Commonwealth and propose a solution for all. We have established friendly relations with many countries and these countries are prepared to sympathise with our efforts. Britain will do her best to see that the Sugar Agreement is maintained as far as a lot of Commonwealth countries and New Zealand are concerned.

*Legislative Council*  
*17th March, 1970*

1975

## Visit of Mr. Roy Mason

This is really a very great and welcome occasion for us to receive in Mauritius the Right Honourable Roy Mason, Minister of Defence. It was very kind of him to accept my invitation to visit Mauritius before a final decision was taken with regard to *H.M.S. Mauritius* and other kindred matters relating to our defence.

First of all, Sir, we welcome you very heartily as a Minister of the British Crown. You are one of the few who have visited us and apprise yourself now of most of the problems facing this country. The first Secretary of State who ever visited Mauritius in our days, was my old friend Mr. Ian Macleod who came here after the great cyclones Alix and Carol in 1960, and he was gratified to see how quickly the country had picked up from the great devastation. As if you have repeated history, Sir, you are coming after the great cyclone Gervaise, which visited us a few weeks ago and you must have seen, as you were saying to me, the place looks very green compared to some of the Far East you have just visited. You see in Mauritius there is a great deal of resilience among the people, a fact about which we Mauritians are very proud.

Perhaps if an overseas visitor were to read our newspapers he would be very surprised to see how we live together at all, because the newspapers every morning, every afternoon, seem to tear us all to bits. They never agree on a common purpose or a common policy based on patriotic endeavour to build this country. I suppose it is the same in Great Britain, although I must say, there is a common purpose, a common thread running through all aspects of British policy. Here, you see, there is a Latin genius and we are subjected to a great deal of self-criticism. We say our prayers in the morning and then forget all about that until we come back at six in the evening to do the same. Then we realise, then we feel with Marcus Aurelius, that we have not been nice to our neighbours. But be that as it may, you have come here at the most momentous period of our history.

The Prime Minister of Great Britain wrote to me last year, just before you made your statement to the House of Commons, that it was the intention of the British Government to withdraw from Mauritius.

At first I thought that might not happen because it would be very sad indeed if we were to lose the vital contact we have had with Great Britain over the years, in fact actively since 1950. The French Government and the people have always been nice to us, nice to Mauritius. In fact the late President General de Gaulle always used to say to me that there was a very soft place in his heart for Mauritius. Despite that, in spite of dividing our affections between France, India, England, and then Africa, we have survived all our little difficulties till now. We now have to meet the supreme difficulty about which you have come to talk to us, that is the withdrawal of *H.M.S. Mauritius* and other associated services from Mauritius.

We in Mauritius should have wished this time would have never come, but you have come here to discuss this withdrawal because you think, and we think so too, that the close ties that exist between Mauritius and England are so important in this outpost of the Commonwealth, that a round table conference would be helpful to all of us. You have discussed with *H.M.S. Mauritius*, you have discussed with us, with my ministers, your officials and my officials and we have agreed together that beggars cannot be choosers. We have agreed that you are going to withdraw and we all know that the very best arrangements have been made for that withdrawal, not only with regards to the British officers who are here, but also to the large number of Mauritians who are serving with H.M.S. in one capacity or another.

You remember, ladies and gentlemen, in my new year's message to the nation, I made mention of this. I also said that although Great Britain would continue to be close to us, the best friend we have in this part of the world, we would certainly have to adjust ourselves to face the future with greater realism than we have had to hitherto, with very powerful friends on our right and left. Be that as it may, we have had full discussions and I think this afternoon a communique will be issued dealing with all the facts of this withdrawal and the arrangements which have been made. No doubt this withdrawal will take place before the next British budget and, I am sure, the withdrawal does not mean the end of the interest that Great Britain takes in Mauritius.

Today I think this part of the Diego Garcia arrangement is very important strategically and I am sure you will weigh all the facts before you completely abandon this part of the world. In fact you are not abandoning it completely; we are only readjusting our common policies and ascertaining with the help of friends a new way of life. It will also enable us more and more to stand on our own legs and proclaim, perhaps more vehemently, our sovereignty and independence. But friends are always necessary. We have here this afternoon ambas-

sadors of great nations, superpowers in fact, superpowers who have made a mess in other parts of the world, and in this part of the world. I would say they would agree, as you said, Mr. Minister, yesterday, on the policy proposed by the Prime Minister of Australia. But the superpowers in this part of the world should understand that peace is paramount and goodwill still more necessary for us to survive in an age where poverty is rampant, where the world is saying peace, peace and peace as Cleopatra used to say to Anthony "men, men and men".

We in Mauritius very much regret that you have to do all this and take other steps and reformulate and re-adjust your policy. We know that we can rely on your friendship and understanding. But we feel very sad, we feel very sorry. The servicemen who have been in Mauritius have been the friends of Mauritius and they have always understood our problem. They have acted like gentlemen; sometimes they had to perform perhaps very difficult jobs but since 1815 when you actually occupied Mauritius, we have been great friends and we appreciate very much what you have done for this country and still continue to do. As I have said in many international forums, Great Britain continues to be the best friend and the greatest single donor to this country.

Although this withdrawal of H.M.S. and its associated agencies is a kind of a tearing away of hearts, I can assure you that I and my government and the people of Mauritius will always look to Great Britain as a great bastion of democracy which we have always tried to emulate, tried to follow and tried to put its principles in practice. We have failed here and there but we have always gained from the experience that you have handed over to us throughout the years. We are very grateful to you and we are very sorry that you will be leaving. I only hope, all the people of Mauritius hope, that we will continue to understand one another, continue to work together, and continue to understand politically what the world requires. I hope that you can guide us and help us to understand and embody the very ideals for which the Commonwealth was founded and in the light of which it is functioning so well to the admiration of the world.

Next week we shall be meeting in Kingston, Jamaica, where Her Majesty the Queen has already arrived. Again there will be a family meeting where discussions will be on the same level, pursuing the same path of peace and understanding in the world. But we are now in this small country called Mauritius, where we have been born and we are deeply rooted with a number of problems, especially that of large unemployment among the younger people. Nonetheless, I am sure, with mutual understanding and the mutual arrangements we used to



make, we shall be able to survive and face all our problems with courage and determination. We believe not only in the future of the Commonwealth but also in another Commonwealth called the E.E.C.; there is a place in our hearts for all that, and in your heart too. I am sure the British people will vote overwhelmingly to join the E.E.C. We ourselves have already joined it, two years ago, through the Yaoundé Convention and we are already benefitting from the arrangements which were consecrated at Lomé only a few weeks ago.

Sad as this parting is going to be, it is not a breakaway, it is not a cutting of the links with the past or the future, for our two peoples mean to continue to live together and fashion a new life in an ever changing society, an ever changing world. I think the great weakness of the Roman Empire was that it could not adjust itself. But the British Empire has adjusted itself many times. It became the Commonwealth, now it has become Europe and the Commonwealth, and it is with this ideal which is serving as a vehicle of thought and action, that I raise my glass, Mr. Mason and Mrs. Mason, to your happiness and to the visit you have paid to us. We are very grateful that you accepted this invitation; we wish you all the best and we hope that despite any changes that may take place, we shall continue to live together with strengthened friendship and with still better understanding.

*Luncheon Speech at Government House in Honour of the British Secretary  
of State for Defence  
26th April, 1975*

1976

## United Nations

Mr. President. May I first of all congratulate you on your election as the President of this Session of the General Assembly.

Your long service at the United Nations and your understanding of the special problems of the developing world are well known and I have no doubt that during your period as President, the United Nations will receive even greater support in its efforts to solve the many political and economic problems that seem to escape immediate attention. I wish to assure you of the fullest cooperation of the delegation of Mauritius in the discharge of your responsibility.

I should also like to convey to your distinguished predecessor, His Excellency Mr. Gaston Thorn, our deepest appreciation for his valuable contribution to the 30th Session of the General Assembly.

May I also pay a tribute to the Secretary General, whose dedication to the service of this organisation, to its objectives and its goals, continues to evoke our respect and admiration.

At this crucial hour in the history of the world in general and of Africa in particular, may I begin with an appeal to all men of goodwill, who believe that peace can only be achieved by common understanding and mutual comprehension and by a sense of justice. Wherever injustice exists, wherever democracy is being trampled upon, wherever disease, ignorance and poverty prevail, wherever there is usurpation of the people's legitimate rights, wherever there is unlawful occupation of one's land by force, let us awake to our responsibilities and strain our energies towards finding solutions based on equality and natural justice in accordance with the ideals of the United Nations Charter.

After thirty-one years of continuous and serious difficulties, the United Nations justifies its indispensability by its achievements. The mere adherence of all the independent nations of the world to its principles clearly exemplifies the trust that we all have in this august body. Why then should any permanent member of the Security Council cast a negative vote and use it to block the admission of independent and free nations like Angola and Vietnam to our organisation? May I appeal in particular to the United States of America to

show its wisdom and realism and renounce the use of this negative vote. Indeed, the abuse of the right to cast a negative vote on the part of permanent members of the Security Council is one of the frustrating features of an otherwise ideal Charter. Neither Africa, with forty-eight states, nor Latin America enjoys such a privilege; nor are they sure they want it; but there is no reason why five states should in 1976 still enjoy special privileges of another age and thus put the rest of the world into an unacceptable position of disadvantage. So we honestly believe that the appropriate articles of the Charter should be reappraised realistically, bearing in mind that the United Nations comprises today no less than one hundred and fifty member states, whereas at the beginning of the Charter it counted a mere fifty.

Mr. President, since our last session there have been striking developments all over the world. Firstly, we had the meeting of the Summit of the Organisation of African Unity in June this year in Mauritius where it was decided to intensify the struggle against racialism and against the remaining regimes of colonialism in Africa. We also had subsequently the meeting of the non-aligned countries in Colombo where a larger number of peace loving countries fully supported the demand of the Organisation of African Unity in regard to the early termination of colonialism in Zimbabwe, Namibia and South Africa, in fulfilment of the heritage of every nation, of its right to independence and national sovereignty. Apart from reaffirming that there can be no compromise with colonialism and racialism, I do not wish to dwell greatly on these issues just now, when momentous consultations and negotiations are taking place towards finding peaceful and early solutions to the problems in these countries. While we fully support the national liberation movements in their valiant efforts to achieve freedom from oppression and foreign rule, and will continue to do so till their objectives are achieved, at the same time, we would welcome any moves for peaceful solutions provided they have the assurance of the earliest achievement of liberation for the struggling peoples of Africa and, therefore, the immediate cessation of their hardships. In my capacity as Chairman of the Organisation of African Unity, I fully endorse the initiatives taken by the five Presidents mandated by the Organisation of African Unity and will be happy to give any further support and assistance that my country may be called upon to render in this connection. Much as we welcome the mission of Dr. Kissinger in Southern Africa, we must point out that there should be no confusion in the mind of anybody as regards our collective stand on Zimbabwe, Namibia and South Africa.

As regards Namibia, much remains to be done and done quickly. First a date for its independence, real independence and not a mockery of it, must be accepted. I suggest that that date should not be further postponed.

Second, the United Nations should convene within four weeks a constitutional conference comprising only three parties; namely, the United Nations itself, South Africa and SWAPO, the true and authentic representative of the Namibian people.

Third, all political detainees and prisoners should be released at least three weeks before the date of the constitutional conference.

Fourth, all South African forces should be withdrawn as soon as the conference starts and they should be replaced by a United Nations peace-keeping force till such time as the Namibian army and police can take over.

It is not too late for the Vorster regime to face the stark realities of life. As the outgoing President of this Assembly rightly pointed out, and as all events tend to show, Mr. Vorster and Mr. Vorster alone would carry the sole responsibility before history if bloodshed and human carnage occur in this part of the world. We of the Organisation of African Unity are determined and have resolved unanimously that, should all efforts fail to find a peaceful solution to these problems, we would ensure that recourse to armed struggle is not only pursued but intensified with the help of our friends and the progressive nations of the world.

Let me here also make it clear that the Organisation of African Unity cannot and will not accept the devious concept of separate homelands and will not give recognition to the bogus independence of Transkei and Bantustan, which will only perpetuate the inhuman policy of apartheid.

I sincerely hope that countries like France will ensure that the decolonisation process in Africa will not suffer any impediment and that the just and legitimate aspirations of the people of the Comores, the French Territory of Afars and Issas and elsewhere will soon be fulfilled.

Mr. President, since this august Assembly met last, there has been a stalemate in regard to the problems of the Middle East and a solution towards fulfilling the legitimate rights of the Palestinian people. It is heart-rending to find that the global pulls of politics have halted developments towards peace in that area and I, therefore, greatly welcome the signs that have emerged lately towards the re-convening of the Geneva Meeting to make further progress on the problems of that region. It is indeed a sad commentary on the state of affairs in this world that while new nations are becoming independent almost the

entire population of a country should be compelled to stay in camps outside their own homeland. There can be but one solution, which demands the strict adherence of Israel to the Charter of the United Nations, withdrawal from all occupied Arab territories and the restoration to the Arab people of Palestine their legitimate rights, to the creation of a separate Palestinian state as provided for and endorsed by the United Nations in the Partition Agreement of 1948.

Lebanon, which was until recently a peaceful and beautiful country, is today in a state of ruin, politically and economically. In spite of all the efforts deployed so far, peace does not seem to be in sight. I believe the United Nations, through the Secretary General, could make a positive contribution to the solution of a conflict which we can only hope is temporary, but success cannot be achieved as long as the sad current situation is allowed to continue.

I also trust that the problems of Cyprus will not lead to a partition of the country but to a reunification of its people for the creation of a prosperous and economically viable state, in which the rights of each and every citizen are safeguarded.

Mr. President, there is one more problem, the problem of disarmament regarding which there has been, unfortunately, little progress. As I said in the last session, I would emphasise that to make *détente* an irreversible process it should extend to all geographical areas and at the same time it should include disarmament measures. I then suggested that the Secretary General of the United Nations be called upon to submit concrete proposals and recommendations for a more positive role for the United Nations in the field of disarmament and I once again stress the necessity as a matter of priority for the revitalisation of the United Nations in this field. If not for expanding *détente*, creating larger areas of peace, and eliminating all sources of war and conflict, at least because of the alarming worldwide sales and gifts of arms and the competition in acquiring them, immediate steps in this field are imperative. In my humble opinion, a United Nations subsidiary organisation deeply committed to the early establishment of disarmament could also function as a monitor to speed up the half-hearted efforts of the big Power blocks towards mutual reduction of arms.

Mr. President, one of the most pressing problems of the moment is, no doubt, the need for early solutions to the economic problems faced by the world as a whole and by the developing countries especially. Economic forces are not the monopoly of either the developed nations or the developing nations. But the forces generated in the economically advanced and industrial nations have in general an adverse effect on

the developing nations. The recent attempts of developing nations to seek redress and achieve unanimity of intent and purpose with the advanced nations have been frustrated, although goodwill has been shown jointly or individually by several advanced countries. The recent meeting of the non-aligned Summit in Colombo has come up with a number of suggestions based on the Nairobi meeting of UNCTAD and I do hope that realism will play its due role in finding early solutions so that the principles of the United Nations Charter can be affirmed in a practical way and the world as a whole can develop in harmony and fruitful cooperation.

In the same context, I may note that, in December next, the Organisation of African Unity is holding a conference at ministerial level in Kinshasha on the study of ways and means for consolidating our economies and on how we, in Africa, through our inter-dependence, can create the prosperity of the continent as a whole. Commerce and trade, industry and technology will be among our main preoccupations. I hope that the ministers who are striving so hard will reach the right conclusions and lay down the foundation for the creation of a united and prosperous Africa.

It is also sad that after ten years of deliberation no equitable and fair solution had yet been found as regards the share of every nation in the exploitation of the wealth of the sea. We can only hope that better counsels will prevail in the next conference and a just and fair solution can at last be found.

Mr. President, we have already before us the resolutions of the United Nations as well as the recent non-aligned conference towards the early realisation of the Indian Ocean as a zone of peace. This is a vital issue for my country which has to depend for its trade and sustenance on the Indian Ocean being an ocean of peace and not a gradually militarised ocean leading towards conflict. The other countries of the Indian Ocean as well as the littoral countries are equally concerned and I hope, Mr. President, that with your active role as President of this Assembly and the great interest you have already taken in regard to this problem from its very beginning, your efforts in this field will be crowned with early success. It is because of these military rivalries between power blocks, extending far beyond their own legitimate spheres of military necessities, that I proposed at the last session a fundamental approach, namely, the conclusion of an international treaty barring the use of force in international relations. I do hope that, however impractical it may appear to those with almost super-human military power, this humble proposal will receive the attention of the vast majority of this Assembly, who are obviously

similarly placed as ourselves and would not like to become involved in any conflict contrary to their own interests.

I cannot refer at this forum, as I should like to do, to all the excellent work which is being done, despite great difficulties, by the Specialised Agencies of the United Nations. We of the third world wish to record our appreciation to the devotion and selflessness of all the men and women who serve in them.

Mr. President, I should once again like to reaffirm the complete faith and belief of the Government and the people of Mauritius in the lofty principles on which the United Nations Organisation is based and I express the hope that at this Session our deliberations will be guided by wisdom in the solution of the many urgent problems that face mankind as a whole.

*14th October, 1976*

## **ANNEX 100**

Robert Rosenstock 'The Declaration of Principles of International Law concerning Friendly Relations: A Survey' (1971) 65 *American Journal of International Law* 713



# THE DECLARATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS: A SURVEY

*By Robert Rosenstock \**

In 1963 the United Nations General Assembly established the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations<sup>1</sup> and instructed it to consider the following principles:

- (a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;
- (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
- (c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;
- (d) The duty of States to co-operate with one another in accordance with the Charter;
- (e) The principle of equal rights and self-determination of peoples;
- (f) The principle of sovereign equality of States;
- (g) The principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter.

As this list of principles involves most of the fundamental areas of interstate relationships, it is not surprising that the Committee has experienced many difficulties in reaching agreed formulations. The difficulties were all the greater as the Committee agreed to work in general on the basis

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<sup>1</sup> The cumbersome title was the product of extensive negotiations. The Eastern Europeans wished to call the item "Principles of Peaceful Coexistence." The West opposed this title because the Charter contained no such concept, because the concept was a negative or passive one incompatible with the affirmative obligations of co-operation created by the Charter, and because it was desired to avoid having the subject become a vehicle for propaganda for the Khrushchev-sponsored doctrine of "peaceful coexistence." The term "friendly relations" is derived from the Charter. The phrase "in accordance with the Charter" was added in order to make it clear that an examination of existing Charter norms was being undertaken and not a revision of the Charter or an elaboration of new norms.

For an analysis of the early work of the Special Committee and of the General Assembly, see the excellent, balanced article by Piet-Hein Houben, "Principles of International Law Concerning Friendly Relations and Co-operation among States," 61 A.J.I.L. 703 (1967); and E. McWhinney, "'Peaceful Co-existence' and Soviet-Western International Law," 56 *ibid.* 951 (1962), and "Friendly Relations and Co-operation among States: Debate at the Twentieth General Assembly, United Nations," 60 *ibid.* 356 (1966).

of unanimity.<sup>2</sup> It was thus necessary to find language which went beyond a mere restatement of the wording of the Charter and yet would be acceptable not only to the United States and the Soviet Union but also to the other states of Europe, Latin America, Africa, and Asia as well. The generality of the language used in the Declaration does not deprive this instrument of its significance as the most important single statement representing what the Members of the United Nations agree to be the law of the Charter on these seven principles.

The Committee held six sessions between 1964 and 1970 and completed the elaboration of the Declaration on the final day of the 1970 session. It represented one of the major achievements of the Twenty-Fifth Anniversary Session of the United Nations.

There is some difference of opinion among Members of the United Nations as to whether the Declaration represents a mere recommendation<sup>3</sup> or a statement of binding legal rules.<sup>4</sup> The truth would appear to lie somewhere between these two extremes, but closer to the latter. Two considerations point to the more limited view as to the effect of the adoption of the text on the state of international law. The first is that there is no difference in United Nations practice between the terms "declaration"

<sup>2</sup> The decision to work on the basis of consensus was based on the view that any other approach would produce a far less useful document, which would record the level and degree of disagreement rather than set forth a body of norms to which all the states on the Committee could adhere and which could thus be regarded as an authoritative statement of key principles of the Charter. This agreement was strained nearly to the breaking point on several occasions, and at no time were the General Assembly Rules of Procedure suspended. Any delegation had at all times the right to insist on their application and consequently on having decisions taken by vote. It is the writer's view that the forbearance shown by the delegations in adhering to the consensus approach was well rewarded.

There are times when consensus is particularly useful, for example when there may be thought of creating "instant international law." Obviously it can be overdone and turned into a nightmare of vetoes. Working by consensus requires the same forbearance on the part of all concerned as is true in the case of the veto in the Security Council.

<sup>3</sup> See statement by Mr. Brennan (Australia), U.N. Doc. A/C.6/SR.1178 (1970).

<sup>4</sup> Cf. statement by Mr. Csatorday (Hungary) to the effect that the declaration would not have the status of a treaty and could not be considered *jus cogens*, but that it would fall into the category of "general principles of law." U.N. Doc. A/C.6/SR.1180 (1970). Mr. Yasseen (Iraq) went further and proclaimed the text to be *jus cogens*. U.N. Doc. A/C.6/SR.1180 (1970). The United States expressed the following view of the nature of the work at the mid-point of the Assembly's work on the principles:

"The significance of this gradual accumulation of areas of agreement can best be understood in light of the nature of the operation in which we are involved. For some years the Assembly has been engaged in formulating legal texts which will be authoritative interpretations of broad principles of international law expressed in the Charter. By the very nature of General Assembly action, the juridical value of such texts is directly dependent on the general support that they command. Obviously formulations representing the general agreement of the Membership of the United Nations have important juridical value. A formulation merely setting forth various highly controversial majority views, by contrast, is totally ineffectual as a declaration of international law. It is legally significant only as evidence of the extent of divergence of opinion within the international community."

and "recommendation." Secondly, statements accepted by the San Francisco Conference limit to some extent the efficacy of efforts at interpretation other than through the amendment route.<sup>5</sup> The principles involved, however, are acknowledged by all to be principles of the Charter. By accepting the respective texts, states have acknowledged that the principles represent their interpretations of the obligations of the Charter.<sup>6</sup> The use of "should" rather than "shall" in those instances in which the Committee believed it was speaking *de lege ferenda* or stating mere *desiderata* further supports the view that the states involved intended to assert binding rules of law where they used language of firm obligation.

It was by no means clear in 1963, when the Special Committee began its work, that a declaration would be the end product. Some states argued that a study of the principles would be a useful and sufficient exercise. Others thought in terms of a number of separate declarations. The gradual personal commitment of the individuals involved contributed to the growth and acceptance of the idea of a declaration on the seven principles. It came to be expected, and all concerned recognized that anyone who could be blamed for frustrating that expectation would pay a political price.

A discussion of the nature of the international system within which these norms must operate is beyond the scope of this article. It is sufficient to observe that the continued existence of the world as we know it—a world in which there is no state capable of imposing an order of its choosing on the entire international community—requires a degree of willingness on the part of states to accept some common standards or rules of the road. The effort to draw up the Principles of Friendly Relations may, in large measure, be viewed, if nothing else, as an effort to clarify the standards and thereby to make more accurate the evaluation

<sup>5</sup> Report of Special Subcommittee of Committee IV/2 on the Interpretation of the Charter, 13 UNCIO Docs. 831-832. The final paragraph of that document reads as follows:

"It is to be understood, of course, that *if an interpretation* made by any organ of the Organization or by a committee of jurists *is not generally acceptable* it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment." (Emphasis supplied.)

<sup>6</sup> Under Art. 31 of the Vienna Convention on the Law of Treaties:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

\* \* \* \* \*

"3. There shall be taken into account together with the context:

- (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretations;
- (c) Any relevant rules of international law applicable in the relations between the parties." U.N. Doc. A/CONF.39/27 (1969), 63 A.J.I.L. 875 (1969).

by states of how far they can go without provoking a reaction arising out of another state's view of what is acceptable. Any such effort conversely assists a state in understanding more precisely what sort of encroachments on its actions or interests it is expected to accept as a consequence of the interdependent nature of the world and how it may react to those which it is not expected to accept.

To regard the codification of the Principles of Friendly Relations solely in these terms, however, would be to ignore the other factors that went into the decision of the General Assembly to undertake this work. These factors, which are now of largely historical interest, ranged from nobility of purpose to a desire to engage in propaganda and included a felt need on the part of some of those who had not been present at San Francisco in 1945 to put their views on record. There was in addition a simple desire on the part of some to provide work for what was at the time an under-employed Legal Committee. Whatever relevance these motives may have to the appraisal of future efforts in this or related areas and however much they explain the behavior of some states during the process, they do not throw much light on the meaning of the Declaration itself.

It is the purpose of this article to relate some of the history of the matter and to provide a few brief notes and comments by way of an introductory guide to the text in light of some of its negotiating history. Such a brief paper on topics of such magnitude can be no more than an introduction.<sup>7</sup> The reader will find it helpful to have before him the text of the Declaration on Principles of International Law Concerning Friendly

<sup>7</sup> By calling this paper a survey, the writer hopes to avoid any disappointment at the lack of extensive analysis of the legal concepts involved outside the context of the Friendly Relations exercise, as well as the absence of extensive references to particular statements made by one delegation or another. The summary records of the Committee, set out in U.N. Docs. A/AC.125/SR.1 *et seq.*, and the six excellent Reports of the Committee, found in U.N. Docs. A/5746, A/6230, A/6799, A/7326, A/7619, A/8018, as well as the records of the discussion of the item in the General Assembly at the 17th through 24th Sessions are available and deserve close attention. Indeed, it is hoped that others with different points of view and a detachment lost to me as a result of extensive participation will also publish papers in this rich field. In doing so, it is suggested that they join the writer in bearing in mind, if not scrupulously following, the advice of Professor Riphagen who stated at the 114th meeting:

“. . . the draft declaration, despite its title, could not be interpreted as one would interpret a carefully drafted legal document. The method of work adopted by the Committee, according to which the wording of principles or parts of principles had been negotiated at different sessions and between different groups of members had inevitably led to overlapping, inconsistencies in wording, lacunae and redundancies. No opportunity had yet been given to review the draft declaration as a whole from a legal point of view, and it did not seem likely that such a review would be seriously undertaken. Consequently, one could not attach legal consequences to the fact that the same notions had often been expressed in the draft declaration in different wordings and that clauses which, once incorporated in one principle or part of a principle, should, in logic and law, also be inserted in another principle or part of a principle, had not been so inserted. In particular, any argumentation *a contrario*—already in any case a dubious process of reasoning in the interpretation of international legal documents—would be inadmissible in respect of the terms of the present draft declaration.” U.N. Doc. A/AC.125/SR.114.

Relations and Co-operation among States in Accordance with the Charter of the United Nations.<sup>8</sup>

## PREAMBLE

The length of the Preamble warrants our first consideration. Indeed, perhaps a Kiplingesque "Just So" story on how the monster got that way would be in order. For the most part, the length of the Preamble is attributable to the need to find a way to meet the favorite ideas of various members of the Special Committee without distorting the body of the text in a manner which would have made it unacceptable to other members, either because inclusion of the ideas would have distorted the balance of the text or because their inclusion would have appeared to signify acceptance as *lex lata* of statements which were acceptable to some delegations only as statements of goals to be sought. Some paragraphs of the Preamble reflect the view of the newer states which wished to emphasize that the world had changed since 1945 and that these principles should be understood as a reflection of that fact; others are responsive to the fear engendered by the Brezhnev Doctrine. Some embody the views of a state which is preoccupied with questions of sovereignty and self-determination as applied to a small island off its coast, while other paragraphs are an effort to underline one or another concept included in the body of the text. The recital of each of the principles in the Preamble itself was a compromise between Latin American insistence on special emphasis on non-intervention and the views of most of the rest of the members that all the principles were equal and interrelated. And that is how the monster got so lumpy.

## PROHIBITION OF THE THREAT OR USE OF FORCE

The first paragraph of the formulation of the prohibition of the threat or use of force is essentially a restatement of Article 2, paragraphs 3 and 4, of the United Nations Charter. The only notable difference lies in the fact that the rule is addressed to "Every State" rather than to "All Members." This change, which is reflected throughout the Declaration with one or two minor exceptions, is based on the notion that, in light of Article 2, paragraph 6, of the Charter,<sup>9</sup> and the fact that almost all the states in the world are either Members of the United Nations or have pledged themselves to adhere to the basic rules of the Charter, the rules of the Charter can now be said to be binding on all states, which are by definition subjects of international law and derive their sovereign existence from that body of rules.

<sup>8</sup> General Assembly Res. 2625 (XXV), Oct. 24, 1970, U.N. General Assembly, 25th Sess., Doc. A/RES/2625 (XXV); 65 A.J.I.L. 243 (1971).

<sup>9</sup> "The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security." This is, of course, not the same as imposing obligations on third states. It is a statement of potential consequences, not a statement of legal obligations on third states.

The second paragraph, which asserts that a "war of aggression constitutes a crime," derives from the Kellogg-Briand Pact and the London and Tokyo Charters which established the War Crimes Tribunals.<sup>10</sup> It was inserted at the request of Czechoslovakia.<sup>11</sup> The utility of including such a statement in the absence of any decision as to what tribunal, if any, would ever deal with the question and on what basis it would do so is perhaps questionable. Actually, this statement is supererogatory in light of the endorsement in General Assembly Resolution 95 (I) of December 11, 1946, of the basic concepts of the Charter and Judgment of the Nuremberg Tribunal. Its inclusion can best be understood as one of several cases in which some delegates were of the view that it would look strange to omit any reference to a particular matter and others saw no harm in including such language. Other examples of this approach abound throughout the text. This practice is inevitable when many states participate in the drafting, and the occasional solecisms or redundancy that result are a small price to pay for international understanding and co-operation.

The third paragraph is a reflection of the understanding that for states to engage in war propaganda would be inconsistent with the Preamble of the Charter and the purposes of the United Nations as set forth in Article 1.<sup>12</sup> This paragraph was included in the declaration at the urging of the U.S.S.R. It was deemed a useful and acceptable addition by others in light of the rôle war propaganda played in the late 1930's and 1960's in exacerbating tense situations. But it appears in the text subject to the express understanding that what is prohibited is state action, not individual conduct, the latter of which would involve issues of free speech.<sup>13</sup>

The fourth paragraph is merely a special case of the general prohibition set forth in the first paragraph, and was inserted because of the historic importance of use of force across boundaries. The term "violate" in the first part of this sentence caused some difficulty at the first session of the Committee in Mexico City in 1964. The United States argued for the use of the word "change" instead of "violate." Subsequently, the United States decided that it could live with the term "violate." The United States Delegate to the Sixth Committee, Mr. William P. Rogers, is to be credited for this step; he explained the United States position as follows:

. . . The . . . difficulty in accepting . . . [violate] was based on apprehensions that [it is] a term which carries with it a legal conclusion of guilt, but which says nothing about the nature of the acts upon which that legal conclusion is to be based. . . . We urged that

<sup>10</sup> See also the Geneva Protocol of 1924 for the Pacific Settlement of Disputes, which contains the declaration that, "a war of aggression constitutes . . . an international crime."

<sup>11</sup> Czech draft Declaration, U.N. Doc. A/AC.125/L.16, par. 2, March 17, 1966.

<sup>12</sup> References to articles are always to articles of the U.N. Charter unless otherwise indicated.

<sup>13</sup> See statement by Mr. Gimer (U.S.), U.N. Doc. A/S.6/SR.1180 (1970). The U.S. repeated this assertion several times in the course of the work of the Committee and it was never challenged.

a formulation more nearly in the language of fact rather than legal conclusion be worked out.

He then explained the decision of the United States to accept the term "violate":

In so doing, we would wish to emphasize that it is our understanding that "to violate" a boundary does not encompass the lawful use of force. In our opinion, it is clear from the work of the Committee and the text of the statement on the use of force, particularly paragraph 3, that the employment of force across frontiers in the exercise of the right of individual or collective self-defense, or any other lawful use of force consistent with the Charter, is not a "violation" of that frontier.<sup>14</sup>

The fifth paragraph of the formulation represents a recognition of the fact that, since 1945, the main tensions between nations have occurred, not in areas where there were established frontiers or boundaries in the classic sense, but where the two sides were separated by international lines of demarcation, *e.g.*, Germany, the Middle East, Korea, Viet-Nam. The United States was particularly insistent that this paragraph be included for this reason. The inherent complexity of any situation in which there are international lines of demarcation instead of established frontiers accounts for the somewhat tortured wording of the paragraph. Despite its complexity, the paragraph is particularly well drafted and covers the situations in which a state can be properly barred from using force: where it has agreed to the line in question, where the Security Council has ordered the states in question to accept the line, or other situations in which a state can be said to be bound to respect the lines.

The sixth paragraph, which deals with reprisals, is again an explication of the general language of the opening paragraph. This norm derives not only from the general language of Article 2, paragraph 4, but from an express decision of the Security Council in Resolution 188 of April 9, 1964,<sup>15</sup> and thus represents an interesting example of the development, or at least codification, of international law in the United Nations. The inclusion of this concept in the text is indicative of the fact that the Committee regarded the concluding phrase of Article 2, paragraph 4, as a limitation on state action and not an escape clause.

The seventh paragraph, which deals with self-determination, was included largely, though by no means solely, at the insistence of the African and Asian states which had recently emerged from colonial situations. Initially there was considerable reluctance on the part of many Western states to include an express prohibition of the use of force in connection

<sup>14</sup> U.S. Delegation Press Release 4706, Nov. 17, 1965.

<sup>15</sup> The resolution "Condemns reprisals as incompatible with the purposes and principles of the United Nations." U.N. Doc. S/5650 (1964). It is probably true that the Kellogg-Briand Pact had accomplished virtually the same end when it stated that "the settlement or solution of all disputes or conflicts . . . shall never be sought except by pacific means." See also the Corfu Channel case, [1949] I.C.J. Rep. 4. Nevertheless, the text on reprisals was a significant act of codification in the sense of making the general rule more specific.

with dependent peoples. The first step toward bridging the gap was taken by the delegations of The Netherlands, and Italy in a text wherein they sought to stress the obligation of administering authorities to permit the inhabitants to exercise their right of self-determination.<sup>16</sup> The agreed paragraph was the outcome of four years of negotiations, based in part on the initial wedge created by the Italian-Dutch proposal. The ambit of the agreed text is sufficient to cover all situations in which force is used to deprive peoples of the right to self-determination.

This statement covers such a use of force in a purely colonial context as well as actions in contiguous nominally independent states or against populations of the acting state itself, subject to certain limitations set forth in the self-determination principle. The paragraph refers to one type of use of force which is "inconsistent with the Purposes of the United Nations." Some states took exception to the inclusion of a prohibition of acts which might take place in other than an inter-state context. Article 2, paragraph 4, they asserted refers to the threat or use of force only in "international relations." Most states, however, took the view that the phrase "international relations" seemed not to be limited to strictly inter-state relations and that relations between an administering authority and a non-self-governing territory are international in character, in light of the international responsibilities imposed under Chapter XI of the Charter. Indeed, the action of the Security Council in 1948 in the Indonesian matter when it called upon the parties "to cease hostilities," was an implied recognition of the proposition that the relations between a state and a dependent territory can at some point be of sufficient international concern as not to fall within the scope of Article 2, paragraph 7. The paragraph is carefully drafted so as to avoid prejudicing in any way the duty of administering states to maintain order and to use force to that end.

The eighth and ninth paragraphs of the formulation recognized the rôle which indirect uses of force have played in the world since 1945. It was argued that to fail to mention such acts might give rise to the unwarranted conclusion that states could do indirectly what they were prohibited from doing directly. The last phrase of paragraph 9, "when the acts . . . involve a threat or use of force," was added in an effort to avoid states' asserting a right to exercise their inherent right of self-defense by way of pre-emptive attack before there had been any use of force against them. The expression reflected an effort to respond to the view sometimes asserted that anything that violates Article 2, paragraph 4, gives rise to rights under Article 51. Whether the addition adds anything but a degree of circularity to the text and what the function of the word "threat" was in the minds of the proponents of the addition are perhaps open to question. Indeed, once the notion of "threat" is included, it is difficult to perceive any limitation on what was previously set forth. Even "encouraging" is a threat.

The tenth paragraph, which deals with territorial inviolability, represented the generalizing on a global scale of a norm which has long applied

<sup>16</sup> U.N. Doc. A/AC.125/L.24, par. 4(c) (1966).



in the Western Hemisphere under Article 17 of the Charter of the Organization of American States—and by implication in the United Nations Charter. The last sentence with its (a) and (b) parts was included in order to insure that questions of the validity of prior treaties would be determined in accordance with treaty law, to take account of the situations covered by Article 107 of the Charter, and to preserve the rôle of the Security Council in light of Chapter VII and Article 25. As can be well imagined, the Article 107 aspect of the question, although minor in the eyes of the overwhelming majority of the members of the Committee, was a matter of considerable sensitivity so far as some of the main participants in World War II were concerned.<sup>17</sup> The inclusion of the phrase “as legal” in the third sentence was important for those states which maintain that recognition is essentially a factual question and that a state may be obliged to deal with an existing situation (*e.g.*, recognizing marriages or property transfers as valid), even though it may have been brought about by illegal means.

The eleventh paragraph on pursuing negotiations relating to a treaty on general and complete disarmament is self-explanatory and consistent with the obligations of the Charter and the Non-Proliferation Treaty.

The twelfth paragraph is a statement of the positive duty of states to co-operate in the maintenance of international peace and security, as contained in the Preamble of the United Nations Charter and Articles 11 and 24. While the extreme generality of paragraph 12 is certainly regrettable, the text does serve to import some notion of positive duty into the formulation. Consequently it forms a foundation for the future work of United Nations committees which are directly concerned with questions such as peacekeeping and the financial crises of the United Nations caused by the continued refusal of some states to accept the obligations of Article 17.<sup>18</sup>

<sup>17</sup> Since 1945 there has been a significant difference of opinion on the scope and meaning of this article, with the Soviet Union on the one hand arguing that everything relating to the postwar peace settlements is beyond the competence of the United Nations, including all situations arising from the War. The Western states took the view that Art. 107 served to provide for peace settlements which involved transfers of territory and to prevent the “enemy state” from using the organs of the United Nations to contest any decisions or actions of the Allied Powers. See Goodrich, Hambro, Simms, *Charter of the United Nations*, 633–637 (1969). The different situations of Japan, which is a Member and therefore has no fears of a prospective wording on the matter but has domestic political concerns about a retrospective reading, and that of the Federal Republic of Germany, which is not a Member of the United Nations and which was indirectly threatened by Soviet comments at the time of the invasion of Czechoslovakia in 1968, complicated the work of the Committee. The competing pressures on this point caused the U.S. Representative to state at the 114th meeting of the Special Committee: “the Charter of the United Nations does not contain any provision that would limit the application of the first three sentences of the tenth paragraph . . . with respect to the Federal Republic of Germany.” U.N. Doc. A/AC.125/SR.114 (1966).

<sup>18</sup> Reference to the work of the Committee on the Definition of Aggression has been deliberately omitted because it seems unlikely that the legal lacunae, if any, will ever be filled by a definition drafted by that body. No text dealing exclusively with the

While the failure of this paragraph to go beyond noting the need to make the system more effective does not affect the theoretical strength of the text as a whole, its effect on concrete situations, such as a state which feels imperiled but receives no succor from the United Nations, could be such as to weaken severely all that has gone before. The general tenor of the Charter; Article 2, paragraph 4; the Preamble, pursuant to which states undertake "to ensure . . . that armed force shall not be used, save in the common interest"; the requirement of Article 2, paragraph 3, that states settle disputes by peaceful means; and the content of Chapters VI and VII of the Charter all support the conclusion that the Charter prohibits any initiative in the use of force. As Judge Jessup has put it,

Under the Charter alarming military preparations by a neighboring state would justify a resort to the Security Council, but would not justify resort to anticipatory force by the state which believed itself threatened.<sup>19</sup>

After all, it takes very little time to request a meeting of the Security Council and even less time for the Security Council to act. The problem is that the system has simply not worked that way. The existence of the veto is a defect which was built into the system at the beginning. This defect was overcome to some extent by the "Uniting for Peace" Resolution. But it must be assumed that the term "breach of the peace" includes acts of such bellicosity as would cause a reasonable government to fear that, if it did not strike first, its very existence would be threatened. Action falling short of a use of force across the border (or boundary) but causing a state (particularly a small state or a state threatened with nuclear destruction) to fear for its existence might include the massing of troops near the border, statements that the threatening state intended war, and acts of minor harassment falling just short of "armed attack." Given this interpretation of "breach of the peace," the "Uniting for Peace" Resolution would appear to meet the situation caused by an exercise of the veto.

What, then, should the threatened state do if the Security Council fails to act but not "because of lack of unanimity of the permanent members"

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rights and duties of states with respect to the use of force will ever solve the dilemma. The system of collective security must be made to function more effectively, and a definition of aggression is unlikely to make the system a more workable one.

<sup>19</sup> A Modern Law of Nations 166 (1948). See also K. Skubiszewski, "Use of Force by States. Collective Security. Law of War and Neutrality," in *Manual of International Law* 745-746 (Sørensen ed., 1968); L. Henkin, "Force, Intervention and Neutrality in Contemporary International Law," 1963 Proceedings, *Am. Soc. Int. Law* 147-150. But see the statement by President Kennedy on Oct. 22, 1962, in connection with the Cuban missile crisis, 47 Department of State Bulletin 715 (1962). Sir Humphrey Waldock has expressed the view, "It is enough if there is a strong probability of armed attack—an imminent threat of armed attack." "The Regulation of the Use of Force by Individual States in International Law," 81 *Hague Academy, Recueil des Cours* 500 (1952). Along the same lines are the views of W. Friedmann, *The Changing Structure of International Law* 258-259 (1964), and D. W. Bowett, *Self-Defence in International Law* 191 (1958).

or if the Security Council or the majority of the Members of the United Nations do not convene an emergency special session?

The situation in the Middle East in the period preceding the June, 1967, hostilities suggests an answer. The crisis was brought before the Council on May 29, 1967, at the request of Canada and Denmark.<sup>20</sup> The records of the debate from May 29 until the outbreak of hostilities on June 5 are a study in frustration, futility, and fecklessness.<sup>21</sup> It is not relevant for the purposes of this paper to seek to apportion blame for this failure. The current problem is the lesson which small states that are threatened may be tempted to draw from it, *i.e.*, that a pre-emptive strike, however, debatable such an action may be legally, is the only way to ensure a small state's continued existence. The problems leading up to this dilemma are not primarily legal. The machinery exists on paper. Until there is the requisite political will to solve the problem of peacekeeping and until states are prepared to accept and to abide by much more far-reaching obligations of co-operation, there is little that can be done to solve the dilemma of a seriously threatened state. Nor can it be said with confidence that only small states may be faced with such questions of survival. Nuclear missiles have raised the same apprehensions in the eyes of large and powerful states. Perhaps the most that can be said is, in the words of Professor Brierly:

The truth is that self-preservation is not a legal right but an instinct, and no doubt when this instinct comes into conflict with legal duty either in a state or an individual, it often happens that the instinct prevails over the duty. It may sometimes even be morally right that it should do so. But we ought not to argue that because states or individuals are likely to behave in a certain way in certain circumstances, therefore they have a right to behave in that way. Strong temptation may affect our judgment of the moral blame which attaches to a breach of the law, but no self-respecting system can admit that it makes breaches of the law legal; and the credit of international law has more to gain by the candid admission of breaches when they occur, than by attempting to throw a cloak of legality over them.<sup>22</sup>

One thing the law can do, and has done, is to make it clear that a state which moves first will reap no positive benefits from such a move. Paragraph ten of the text emphasizes this point by asserting that a state may not acquire territory in such a manner.

The final paragraph is a general formulation which avoids the existing disagreements among the Member states. The text thus accommodates those who support and those who oppose the residual peacekeeping rôle of the General Assembly in cases in which the Security Council is unable to act, those who regard regional organizations as able to authorize the use of force under certain circumstances and those who do not, those who

<sup>20</sup> Letter dated May 23, 1967, from the Permanent Representatives of Canada and Denmark addressed to the President of the Security Council, U.N. Doc. S/7902 (1967).

<sup>21</sup> U.N. Docs. S/PV.1343 to 1346 (1967).

<sup>22</sup> Brierly, *The Law of Nations* 318-319 (5th ed., 1955). The passage has unfortunately been deleted in the sixth edition (1963) by Sir Humphrey Waldock.

subscribe to the notion of an inherent right of self-defense against colonialism and those who do not, those who read Article 51 restrictively and place their emphasis on the phrase "if an armed attack occurs," and those who do not. It cannot be gainsaid that the generality of this paragraph diminishes the utility of the text as a whole, since it leaves unanswered so many important questions relating to the use of force. The gaps between governmental positions on the matters in question are, however, so great that it was not possible to contemplate general agreement on any detailed language.

In spite of this limitation on the completeness of the formulation, the writer believes that the individual paragraphs, while incapable of providing a complete system, provide vital guidelines in a number of key situations. Certainly this formulation, as well as others, must be understood in the manner described by Professor Arangio Ruiz (Italy), when he said ". . . any principle of general international law and/or any principle of Charter law not embodied in the declaration was not, as a consequence, any less a part of international law. More precisely, it was no less fundamental than the principles actually embodied in the declaration. . . ." <sup>23</sup> None differed with this view.

A final word is necessary concerning the term "force" itself. There existed throughout the history of the Committee's consideration of the question a difference of opinion between those members who regarded the term "force" in Article 2, paragraph 4, as limited to armed or physical force and those who argued that it included "all forms of pressure, including those of a political and economic character, which have the effect of threatening the territorial integrity or political independence of any state." <sup>24</sup> The limited view of the term "force" was advocated by the Western states, several Latin American states, and one or two others. The Western argument was based on the drafting history and textual analysis of the Charter. Some proponents of this view urged that under the Charter any breach of Article 2, paragraph 4, gave rise to a right of self-defense in accordance with Article 51 and that it could not be said that the Charter intended to give rise to such a right in response to non-physical acts such as economic pressure. The majority of African and Asian states, some Latin American states, and the Eastern bloc argued that the purpose of Article 2, paragraph 4, was, *inter alia*, to protect the political independence of states and that this could be just as readily imperiled by economic and political pressure as by armed force. They argued that, since the Charter must be interpreted in the same contemporary manner that John Marshall had urged as the governing principle for the interpretation of the U.S. Constitution, it was wrong to be bound by the *travaux préparatoires* of the 1940's. Ostensibly the text on "force" does not answer this point. It was tacitly agreed to "paper over" this difference by elevating the text to a sufficient level of abstraction to hide the difference; it is therefore possible to read many of the paragraphs on the principle as consistent with either view. The nature of the specific

<sup>23</sup> U.N. Doc. A/AC.125/SR.114 (1970).    <sup>24</sup> U.N. Doc. A/6320, p. 23 (1966).

acts included in the text and the fact that such matters as coercion by other means are dealt with elsewhere in the text provide support for the view that a restrictive interpretation of the scope of the term "force" is called for.<sup>25</sup> This, however, does not affect the fact that those who stressed the importance of the need to protect states against economic pressures of a certain magnitude accomplished their goals as well. Evidence of this is found in the Preamble and the text on the principle of non-intervention. Thus, due regard was shown for the law and for the meaning of Article 2, paragraph 4, and other means were found to take care of the legitimate needs voiced by certain states.

#### PEACEFUL SETTLEMENT OF DISPUTES

This principle is the other side of the coin of the obligation not to use force. The paragraphs essentially repeat some of the relevant articles of the Charter.<sup>26</sup>

The phrase in the penultimate paragraph, "recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality," represents the only positive achievement of the Committee in formulating this principle.<sup>27</sup> Presumably it will lay to rest once and for all the retrograde notion that a state derogates from its sovereignty when it agrees to submit future disputes to binding third-party adjudication. The weakness of the formulation of this principle lies more in its errors of omission than those of commission.<sup>28</sup> It is by far the least impressive achievement of the Committee.

The proposals on which agreement was not possible may perhaps be read as a primer of first steps to be taken to provide alternatives to a world ruled by force. They included:

Legal disputes should as a general rule be referred by the parties to the International Court of Justice. . . . General multilateral conventions . . . should contain a clause providing that disputes relating to the interpretation or application of the convention . . . may be referred on the application of any party to the International Court of Justice. . . . Every State should accept the compulsory jurisdiction of the International Court of Justice.

The debates on this matter were another depressing example of the rigid, anachronistic doctrines of state sovereignty still adhered to by the Soviet Union and the curious tendency of some of the new states to prefer nego-

<sup>25</sup> In addition to the self-serving statements by a number of states that they regarded the term in the restricted sense, there were statements by those who would have preferred the broader view but expressed regret that the text supported the restrictive view. See statement by the delegation of Nigeria U.N. Doc. A/AC/125/114 (1970).

<sup>26</sup> For an excellent discussion of the drafting history of the text on this principle, see Heuben, *loc. cit.*, note 1, above, at 710-716.

<sup>27</sup> The persistent efforts of Professor Riphagen account for this achievement.

<sup>28</sup> The formulation of this principle must be read in light of Professor Arangio Ruiz' statement referred to on p. 724 above.

tiation and to eschew third-party settlement as contrary to their interests or beyond their means.<sup>29</sup> In the opinion of the writer, the failure of the international community over the years to make progress in this area (as the text reflects) is the main reason why so many disputes are allowed to fester for so long as they are not an immediate threat to world peace. If there were a wider acceptance of peaceful modes of settlement, much anguish and suffering, not to mention danger, could be avoided.

#### NON-INTERVENTION

The development of the text on this principle from 1964 until final agreement can be viewed as a paradigm of one of the ways in which legal norms are conceived, incubated, and born in the United Nations. Political realities, legal theory, and individual traits of stubbornness, pride, and eventually courage and determination were involved.

The principle was included largely at the insistence of Eastern Europe and Latin America. At the initial meeting of the Special Committee in 1964, the United States, for one, took the position that the only principle of non-intervention found in the Charter was Article 2, paragraph 7, which related to intervention by the United Nations. The U.S. Representative argued:

. . . in the United States delegation's view Article 2(7) of the Charter applied only to intervention by the United Nations, and the intervention by one State in the affairs of another was illicit under the Charter only when it was accompanied by the threat or use of force. Article 2(7) was the only provision in the Charter which made express reference to non-intervention, and the scope of State intervention was defined only in Article 2(4).<sup>30</sup>

The United States received relatively little support for its position. In addition to sniping commentary on motives, it was argued that the United States had accepted extensive obligations of this general character in the Organization of American States years earlier and therefore should have no difficulty in accepting the notion in the broader United Nations context.

The United States Delegation in the Special Committee was not insensitive to its relative isolation on this point and to the propaganda advantage which others were seeking to derive from the situation. Other factors were also at work to cause the United States to reconsider. The Soviet Union, following its established practice of introducing one propaganda item a year, proposed the following year at the 20th General Assembly that the Assembly consider, as an important and urgent matter, "The Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty."<sup>31</sup> The new item was sent to the First (Political and Security) Committee rather than to the

<sup>29</sup> Those of the newer states which refused to support a more progressive text on this principle can be only partially excused on the ground that they are following the example of the major Powers. More can be expected than an adherence to the lowest common denominator.

<sup>30</sup> U.N. Doc. A/AC.119/SR.32 (1964).

<sup>31</sup> U.N. Doc. A/5997 (1965).

Sixth (Legal), which is a notoriously poor forum for propaganda because of its traditionally high professional standards. The statements made by the Soviet Union in connection with the item as well as the nature of the draft they tabled drew a comment from Ambassador Goldberg expressing disappointment that the Soviet Union had used the United Nations to reopen the Cold War. Ambassador Goldberg pointed out that the Soviet draft, *inter alia*, ignored the types of intervention which had become most prevalent since 1945; *i.e.*, indirect uses of force, such as the promotion and organization of armed bands, terrorism, and the fomenting of civil strife.<sup>32</sup> The United States tabled a counter-draft in the form of a series of amendments.<sup>33</sup> The states of Latin America, Africa, and Asia then produced compromise texts which, after extensive negotiations among all concerned, resulted in General Assembly Resolution 2131(XX). The paragraphs of Resolution 2131 covering indirect uses of force were drawn directly from the draft of the Friendly Relations Committee on the Prohibition of the Use of Force which had been prepared in 1964.<sup>34</sup> The final text that was adopted was sweeping in character, and the United States representative, in explaining its affirmative vote in the Committee, stated:

I shall not elaborate on the law of non-intervention and self-defense—for two reasons: First, as I have suggested, we view this Declaration as a statement of attitude and policy—as a political Declaration with a vital political message—not as a declaration or elaboration of the law governing non-intervention. Second, a Special Committee of this Assembly on the Principles of International Law concerning Friendly Relations and Cooperation among States has been given the precise job of enunciating that law. Thus we leave the precise definitions of the law to the lawyers, and our vote on this resolution is without prejudice to the position on the definition of the law we shall take in the Special Committee.<sup>35</sup>

At the following session of the Friendly Relations Committee, the United States joined with Australia, Canada, France, Italy, and the United Kingdom in tabling a draft statement of the principle of non-intervention.<sup>36</sup> The sponsors of this proposal stressed the close connection between the prohibition of the threat or use of force and the principle of non-intervention. Thus a step had been taken away from the limitation of the doctrine to Article 2, paragraph 7, strictly construed. A number of other delegates, however, criticized the formulation because it was limited to the prohibition of the threat or use of armed force. This criticism, plus the strong pressure to find some way of meeting the felt need not to limit the text on the use of force to *armed* force, contributed to an eventual Western

<sup>32</sup> U.N. Doc. A/PV.1406 (1965).

<sup>33</sup> U.N. Doc. A/C.1/L.343/Rev.1 (1965).

<sup>34</sup> See Working Paper I (U.N. Doc. A/5746, par. 106) of Mexico City. This paper had not been finally agreed to at the Friendly Relations Committee meeting because of the problems with the term "violate," discussed above. The text nevertheless formed the basis for the core of Res. 2131 and the text ultimately agreed upon by the Friendly Relations Committee. See U.N. General Assembly, 20th Sess., Official Records, Supp. No. 14 (A/6014), p. 11; 60 A.J.I.L. 662 (1966).

<sup>35</sup> Statement by Ambassador Charles W. Yost, U.N. Doc. A/C.1/SR.1423.

<sup>36</sup> U.N. Doc. A/AC.125/L.13 (1966).

recognition that some way had to be found to cover economic and political pressures of sufficient magnitude to affect political independence.<sup>37</sup>

Unfortunately, the Special Committee chose this moment, when there was every reason for a spirit of co-operation to prevail, to commit its greatest blunder. A number of the delegates insisted that Resolution 2131(XX) was the perfect embodiment of the principle and had to be accepted verbatim by the Special Committee. The representatives of Chile and the United Arab Republic successfully urged the Committee to adopt the following resolution:

*The Special Committee,  
Bearing in mind:*

(a) That the General Assembly, by its resolution 1966 (XVIII) of 16 December 1963, established this Special Committee to study and report on the principles of international law enumerated in General Assembly resolution 1815 (XVII),

(b) That the General Assembly, by its resolution 2103 (XX) of 20 December 1965, definitively fixed the structure of this Committee, granting it, *inter alia*, authority to consider the principle of non-intervention, and

(c) That the General Assembly, by its resolution 2131 (XX) of 21 December 1965, adopted a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty which, by virtue of the number of States which voted in its favour, the scope and profundity of its contents and, in particular, the absence of opposition, reflects a universal legal conviction which qualified it to be regarded as an authentic and definite principle of international law,

1. *Decides* that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965; and

2. *Instructs* the Drafting Committee, without prejudice to the provisions of the preceding paragraph, to direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX).

The vote was 22 in favor, 8 opposed, with 1 abstention. The irony of adopting a resolution speaking of "the universal legal conviction" by a divided vote did not go unnoticed by the minority who commented publicly on it. The United States and the other co-sponsors of the five-Power draft were of the view that they had made an effort to move forward which had been arrogantly rebuffed. Some of the supporters of Resolution 2131 (XX) ignored Ambassador Yost's statement and argued that the Western states had used them in the General Assembly to blunt the Soviet

<sup>37</sup> This shift over a period of years is evidence that those who say the General Assembly is frustrated because a particular Permanent Member is taking a negative position may be allowing pessimism to blind them to the fact that even giants move when they are brought to perceive it to be in their interest to do so. For another example, see the history of the Charter amendments increasing the size of the Security Council and the Economic and Social Council, and compare the initial Soviet statements with its eventual ratification.



offensive but were now seeking to back off. In short, there was little good will on any side. From 1966 until 1970 there were virtually no substantive exchanges on non-intervention except a sterile fight as to whether and to what extent the Committee was bound by the General Assembly resolution. The Latin American states refused to consider any changes in the text of Resolution 2131 (XX), the United States doggedly quoted Ambassador Yost, and the United Kingdom reminded all who would listen that it had never voted for Resolution 2131 (XX) in the first place.<sup>38</sup>

Indeed, the matter aroused so much bitterness that serious consideration was given to deleting the principle from the list. Public statements by delegations from North and South America hinted at this as being the only way out. Fortunately cooler heads prevailed in the long run, and, with the quiet help of one Latin American jurist who shuttled between the two camps, an accommodation was eventually reached. Individual stubbornness played a rôle in creating the controversy and individual energy and determination helped to bring about a solution.

The United States and the Western European states reduced the extent of the changes which they had at first sought in Resolution 2131 (XX), and the Latin Americans responded by accepting the remaining requests.

The final formulation of the principle parallels very closely the relevant articles of the Charter of the Organization of American States and thus represents another example of the generalizing of norms long accepted in the Western Hemisphere. The final text is sweeping in scope, and the acceptance of it by at least the Western Powers should be understood in the light of the particularly well-phrased remarks of the United Kingdom delegate, Mr. Sinclair, at the 114th meeting.<sup>39</sup>

#### DUTY TO CO-OPERATE

The text on this principle accurately reflects the obligation under the Charter to co-operate and contains no apparent ambiguities requiring detailed clarification. It is an anodyne statement which accords a commendable importance to universal respect for and observance of human rights. The main difficulties encountered in the drafting of this text turned

<sup>38</sup> In part this entire dispute reflected philosophical differences as to the nature and rôle of General Assembly resolutions and, for the Latin American states, a fear that if they agreed to reopen the questions answered by Res. 2131 (XX), they would be weakening the importance of the resolution, which had been voted for by such disparate states as Cuba, the Soviet Union, the United States, and Syria, to name a few. Indeed, only the principled abstention of the United Kingdom prevented the unanimous adoption of that resolution.

<sup>39</sup> "In considering the scope of 'intervention,' it should be recognized that in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples.

"The United Kingdom delegation wished to state its understanding that the concept of intervention in the 'external affairs' of States was to be construed in the light of that commentary." U.N. Doc. A/AC.125/SR.114.

on an effort by the Eastern European delegations to include some mandatory language on non-discrimination. The complexity of such questions as the problems of the relationship of state trading economies to GATT and the rôle of trade preferences for developing countries made it impossible for the Committee to move beyond the general language of the lead paragraph.<sup>40</sup>

#### EQUAL RIGHTS AND SELF-DETERMINATION

The achievement of an agreed formulation of this highly complex principle was one of the most difficult tasks the Committee faced. Initially there was a split between those who accepted a right of self-determination of peoples and the duty of states to grant it, and those who argued that under international law only states could have rights or be the beneficiaries of rights. There were those who argued that the principle was universal in its application and those who sought to limit its application to colonial situations of the salt-water variety. Additional difficulties were created by the insistence of some representatives that a failure to grant immediate independence gives rise to the right of the people to use force in self-defense against colonialism and created a duty on the part of other states to provide all possible assistance. Some even asserted doctrines which would have made Article 2, paragraph 4, subject to a class warfare exception.<sup>41</sup> It was also argued that colonialism was illegal *per se* and that the only legitimate means of exercising the right of self-determination was the achievement of full independence. Yet another source of difficulty was the question of the rôle and relevance of General Assembly Resolution 1514 (XV). This resolution, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples" is the most frequently cited resolution in the United Nations.<sup>42</sup> Most of the African and Asian nations regard it as a document only slightly less sacred than the Charter and as stating the law in relation to all colonial situations. Other states, particularly those in the West, do not hold the resolution in like esteem and are inclined to regard some of its paragraphs as considerably overstated, even as statements of political desiderata. In the final analysis, the African and Asian states showed considerable forbearance in not insisting on an express reference to this resolution. Had they done

<sup>40</sup> This is a part of the general problem of how to take into account the differences in economic organization between state-trading and free-market economies. More broadly, Professor Hazard, speaking of most-favored-nation clauses, stated the problem in the following terms:

"The clause cannot operate to encourage expansion of trade by opening markets on a non-discriminatory basis to low-cost producers because factors other than cost and tariffs influence the decisions of state-trading buyers. In short, the most-favored-nation clause has proved itself to be no longer a sufficient desideratum for private-enterprise states in their commercial tariff concessions by private-enterprise states." "Commercial Discrimination and International Law," 52 A.J.I.L. 495 (1958).

<sup>41</sup> See Houben, *op. cit.* note 1 above, at 724, particularly note 116, for a discussion of Communist ideology on this point.

<sup>42</sup> U.N. General Assembly, 15th Sess., Official Records, Supp. No. 16 (A/4684), p. 66.

so, agreement would have been impossible. In return, the Western states made a considerable effort to include in one form or another as much of the substance of that important resolution as they could. One view of the Committee's approach to the problem was expressed by Mr. Lee of Canada as follows:

It [Resolution 1514] was a politically motivated expression which had persuasive force in the Committee's drafting of the legal elements of the principle.<sup>43</sup>

The ability of the Committee to resolve these deep divisions demonstrated both international co-operation and the creativity of the legal mind. Indeed, many of the solutions found in the drafting of the Principles of Friendly Relations speak well of the technical skill of the participants. Frequently these skills served merely to find devices to paper over differences. Here they produced agreements of considerable significance.

As can be seen from the initial paragraph of the formulation on this principle, the Committee recognized that peoples have the right of self-determination, that it is a universal right of all peoples, and that every state has the duty to respect this right. This represents a significant step in the progressive development of international law when compared with the positions taken in 1964. Many states had never before accepted self-determination as a right. Now it is recognized, as the second paragraph asserts, that states have an affirmative duty to promote the realization of the right. Instead of affixing labels of legality or illegality to existing colonial situations, the Committee in paragraph 2 affirmed "a speedy end to colonialism, having due regard to the freely-expressed will of the people" as a goal rather than an immediate obligation. This phrase, particularly with its emphasis on the "will of the people," reflected a realistic appreciation of the fact that some existing colonies would not be viable as independent states and that some colonial people have expressed a preference not to seek full self-government (and in some cases to remain colonies) rather than to be cut adrift without support or placed in danger of annexation by other less enlightened states.

The Committee in paragraph 4 clearly recognized that full independence was not the only mode of implementing the right of self-determination and expressly mentioned such alternative possibilities as "free association or integration with an independent State or the emergence into any other political status freely determined by a people."<sup>44</sup> At the same time, the Committee, in paragraph 6, expressly prohibited an administering state from seeking to terminate its responsibilities under the Charter by incorporating a colony or non-self-governing territory into the metropole without the free consent of the people and then by claiming the matter to be

<sup>43</sup> U.N. Doc. A/AC.125/SR.114, p. 33 (1970). Indeed, this terse statement describes how the Committee approached several resolutions in various of the principles about which there was disagreement as to the legal effect of the resolution *per se*.

<sup>44</sup> The inclusion of the last phrase at the suggestion of Mr. Engo (Cameroon) was a useful addition to the impliedly open-ended list contained in the Annex to Resolution 1541 (XV).

outside the legitimate concern of the United Nations. This is the function of the phrase "such separate and distinct states shall exist until . . . ."

The Committee also came forthrightly to grips with the application of the principle to people within an existing independent state. To have failed to deal with this problem would have been to diminish the universality of the principle. The effort to deal with the situation, however, created difficulties for states possessing different and distinct peoples and for states with potential secessionist groups within their territory. The Committee faced these problems and produced a reasonably satisfactory statement. Although paragraph 7 is drafted in a somewhat remote manner in the form of a saving clause, a close examination of its text will reward the reader with an affirmation of the applicability of the principle to peoples within existing states and the necessity for governments to represent the governed. The fact that these aspects of the principle must be extracted by an *a contrario* reading of the paragraph should not be misunderstood to limit the sweep and liberality of the paragraph. Moreover, paragraph 7 must be read in light of the state's duty to promote respect for an observance of human rights and fundamental freedoms in accordance with paragraph 3. The difficulties in applying these texts to specific situations are great indeed. This is particularly true where the matter is, in the view of the affected state, an internal matter within the meaning of Article 2, paragraph 7. The difficulty in applying the standards of this text in a given situation (*e.g.*, the situation in Pakistan) should not be permitted to detract from the merit of the formulation or the extent to which governments should be induced to adhere to them. In the short run, expediency may incline a government toward silence. In the long run silence is inimical to a just and lasting peace.

The problems of the use of forcible measures to deny peoples the right to self-determination and of the rights and duties of third states in such situations were handled with particular adroitness by the Committee in paragraph 5. States administering non-self-governing territories were not barred from using force to maintain law and order or otherwise carrying out their responsibilities under Chapter XI. With regard to the obligations of administering Powers, the paragraph restricts itself to a simple corollary of the duty to respect the right of people to self-determination, namely, that any forcible action which deprives people of the right is a violation of the duty owed. The right of response to such acts by the people concerned and the duties of third states in such situations were left sufficiently vague to permit acceptance by those who believe third states have a duty to send arms and men and those who believe third states should supply only moral and political support. Arguments in support of the right of response to such illegal uses of force by an administering state may be couched in terms of an inherent right of rebellion or the recognition of "peoples" as sufficiently subjects of international law to possess an inherent right of self-defense or in terms of the rules relating to the consequences of a breach of a multilateral treaty.<sup>45</sup> The first argu-

<sup>45</sup> Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, Art. 60, U.N. Doc. A/CONF.39/27 (1969); 63 A.J.I.L. 875 (1969).

ment is essentially an extra-legal doctrine which provides little guidance about the rôle that may be performed by third states. The third is a doctrine which, if broadly applied, can be dangerously destabilizing and lead to a rapid unraveling of the entire system. The best solution would seem to lie in regarding a use of force to deny a people its right of self-determination as a delict giving rise to rights on the part of the people concerned. This requires that the delict be reasonably defined. This task has been adequately accomplished by paragraph 5, if read in the context of the text on this principle as a whole, particularly paragraphs 7 and 8. This reading rules out the citation of paragraph 5 to support the type of radical revolutionary activity which the Castro regime in Cuba sought to export to such places as Venezuela. The highly sophisticated United States proposal of 1966, which formed the basis of the Western position, dealt with this problem in an extremely complex manner through a series of presumptions, rebuttable through their implications *a contrario*. Paragraphs 7 and 8, which derive from the initial American proposal and General Assembly Resolution 1514 (XV), meet the problem in a slightly less complex way. Like the earlier American proposal, the merit of the text lies in the fact that, while not condoning the export of revolution, it does not limit the scope of application of the principle of self-determination. This pragmatic approach falls just short of acceptance of the notion of self-defense against colonialism, which the writer believes, with Dr. Skubiszewski,<sup>46</sup> to be "debatable."

In sum, while the text of the principle of equal rights and self-determination contains some tortured phraseology and while it may not be set out in the most logical order, a careful reading of it will show it to be a moderate and workable text.

#### THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES

Though very short and simple, the formulation of this principle constitutes an important affirmation of Article 2, paragraph 1, of the Charter.<sup>47</sup> In particular, it underlines in clear terms the inconsistency with the Charter of any notion of limited sovereignty—the view that a state within a particular political or social system is not free from invasion or occupation by the armed forces of other states or is limited in its freedom to develop its own political, social or economic system. Indeed, the freedom of a state "to choose and develop its political, social, economic and cultural

<sup>46</sup> In *Manual of Public International Law*, 771–772 (Sørensen ed., 1968); cf. Professor Stone's comments on the Manual, 63 A.J.I.L. 157, 162 (1969).

<sup>47</sup> The term "affirmation" of Art. 2(i) was deliberately used in this case as the agreed text adds little to what was agreed in San Francisco in 1945 when the Technical Committee gave the following list of elements included in the notion of "sovereign equality":

- "(1) the states are juridically equal;
- "(2) that each state enjoys the rights inherent in full sovereignty;
- "(3) that the personality of the state is respected, as well as its territorial integrity and political independence;
- "(4) that the state should, under international order, comply faithfully with its international duties and obligations." 6 UNCTAD Docs. 457.

systems" was the one significant addition to the 1945 formulation. The behavior toward Chile of the United States and other states members of the Organization of American States in recent months is a suitable example of the level of conduct demanded by this principle. Events in Czechoslovakia in 1968 were a clear case of violation of a number of principles of the Charter, including that of the sovereign equality of states.

Various provisions which were suggested for inclusion in the text on this principle, but were rejected for one reason or another, included the idea that all states have the right to join international organizations, the principle that Members of the United Nations are equally obligated to share the burdens of membership,<sup>48</sup> the fact that the sovereignty of each state is subordinate to international law,<sup>49</sup> and the right of states freely to dispose of their national wealth and natural resources. Indeed, an acceptable compromise was very nearly worked out on the question of natural resources as the result of intensive negotiations among the Western countries and Cameroon and Kenya.<sup>50</sup> The U.S.S.R., for reasons not apparent at that time or later, blocked agreement on the ground that the compromise text was too restrictive of the right freely to dispose of natural resources.

In relating the formulation of this principle to the world today, it is advisable to recall the words of Mr. Reis (U.S.): "that a legal text was clear and correct merely took the matter a few steps forward. It was necessary to hope, however, that in time there would come to be a greater acceptance of the right of each State to live its own life; cynicism and despair seemed the only alternative to the hope."<sup>51</sup>

#### GOOD FAITH FULFILLMENT OF OBLIGATIONS

The text of the principle is a direct and uncomplicated statement. While it may be argued that the principle is self-evident, it is a useful stabilizing development to have it spelled out to this degree. The principle is derived from Article 2, paragraph 2, but clearly extended here to cover the entire structure of international relations. Paragraph 3 was initially a source of some difficulty, as certain states sought to write in a selective list of bases

<sup>48</sup> U.N. Doc. A/AC.125/25 (1970). A United States proposal related to the failure of the U.S.S.R. and its allies and France to accept the financial burdens of membership.

<sup>49</sup> A doctrine long accepted by international lawyers in the West and supported by such Afro-Asian countries as Cameroon, Kenya, Japan, Lebanon, and Nigeria. The highly restrictive Soviet doctrine of state sovereignty made it impossible for the Soviet Union or its allies to accept even this theoretical limitation on untrammelled freedom of action by states.

<sup>50</sup> The compromise text which came so close to obtaining agreement was proposed by Kenya and read: "Each State has the right to freely dispose of its natural wealth and natural resources. In the exercise of this right, due regard shall be paid to the applicable rules of international law and to the terms of agreements validly entered into." Although such a statement is logically more a corollary of the principle than an element, it is unfortunate that this phrase, expressing the essence of Res. 1803 (XVII), the most authoritative General Assembly pronouncement on the matter, did not find its way into the declaration in some form or other.

<sup>51</sup> U.N. Doc. A/AC.125/SR.114 (1970).

for the invalidity of treaties.<sup>52</sup> They abandoned this effort eventually and relied instead on the Vienna Convention on the Law of Treaties and the current work of the International Law Commission on state succession with respect to treaties, to cover the subject.

#### CONCLUSION

The text of the Declaration on Friendly Relations is incomplete if viewed as a blueprint for world order. Too many issues are not covered; too many of those that are covered are dealt with in a vague manner. Moreover, there is room for debate as to the nature of the binding force of the Declaration among states. Finally, the text is largely oriented toward the preservation and protection of state sovereignty rather than the development of new norms and new mechanisms more suited to the increasingly interdependent world of today and of the future. It speaks of international co-operation but fails to deal meaningfully with such matters as increasing the mechanisms of the United Nations for peacekeeping and the peaceful settlement of disputes. One must hope that the efforts of the Peacekeeping Committee, future work on the Development Decade, and the current General Assembly item on the International Court of Justice will help to remedy these faults.

In spite of these *caveats*, the text represents a very substantial contribution to clarification of the key concepts of international law involved—so much so that a significant number of states pointed to the provisions in the course of recent debate in the United Nations as an example of the type of evolution which at this stage better served the needs of the international community than a formal Charter review. Once comparable progress is made on such matters as peacekeeping, dispute settlement, and economic development, the Friendly Relations Declaration will form an indispensable part of a very important whole.

One further benefit of the undertaking was the education of decision-makers. The enlightened perceptions of decision-makers who have been properly brought to see the issues have been regarded by some contemporary commentators as the best hope for an ordered, peaceful world. Certainly they are a necessary if not sufficient element of such a world. At least three current Foreign Ministers have participated directly to one degree or another in the give and take of the exercise—one from North America, one from Europe, and one from Latin America. In addition, the Legal Advisers to the Foreign Offices of a number of countries from all corners of the world have participated. It is inconceivable that their perceptions of the issues involved have not been clarified and sharpened.

<sup>52</sup> The arguments that were made dealt primarily with unequal treaties, particularly in their relationship to state succession.

## **ANNEX 101**

1970 Report of the Special Committee on Friendly Relations, UN Doc. A/8018 (1970)  
(extracts)





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

**GENERAL ASSEMBLY**

**OFFICIAL RECORDS : TWENTY-FIFTH SESSION**

**SUPPLEMENT No. 18 (A/8018)**

**UNITED NATIONS**

**REPORT OF THE SPECIAL COMMITTEE  
ON PRINCIPLES OF INTERNATIONAL LAW  
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**SUPPLEMENT No. 18 (A/8018)**



**UNITED NATIONS**

**New York, 1970**

... there was also a proposal by one representative to amend the beginning of the first proposal relating to point IX to read: "States enjoying full sovereignty and independence and possessing a government representative of all distinct peoples within their territory and effectively functioning as such shall be ...".

66. One representative pointed out, with reference to point III, that the present version of the compromise formula contained an alternative with respect to the order in which mention was to be made on the one hand of the principle of equal rights and self-determination of peoples and on the other of fundamental human rights. Another representative said he would prefer human rights to be mentioned second. So far as points IX and X were concerned one representative remarked that the formula he had submitted informally during the consultations should be regarded as provisional, and subject to further elaboration, the words in square brackets representing alternative drafting possibilities.

d. Progress Report by the Chairman of the Drafting Committee and comments thereon

67. The Chairman of the Drafting Committee reported orally to the Special Committee at its 113th meeting held on 10 April on the progress which had been made during the first reading of, and informal negotiations relating to, the principle. The following is a summary of that progress report and of the comments made thereon by members of the Special Committee (see A/AC.125/SR.113). The report and the comments should be read in conjunction with the report of the 1969 Drafting Committee on the principle (see paragraph 61 above).

68. The Chairman of the Drafting Committee said:

"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.

69. The observations made by several representatives on the progress report of the Chairman of the Drafting Committee are summarized below. A number of representatives stated that the fact that they had made no observations on the principle at that time should not be taken as implying that they agreed with all that had been said.

70. Speaking of the principle in general one representative stated that the formulation should express the rule 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. According to another the Committee's work must be viewed in the wider context of the general world situation. 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 regime in the central part of Southern Africa. One representative stressed that 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.

71. So far as point I was concerned, it was stated on behalf of one delegation 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.

72. One representative favoured the text proposed for point II but considered that it should be more precise. Further, point III should contain a list of acts which were violations of the principle of equal rights, such as subjugation, foreign exploitation and colonialism, and should indicate that they were violations of international law and an obstacle to peace. Another delegation, referring to the fact that the inclusion of the word "colonialism" in point III was unacceptable to some delegations, stressed that colonialism was the main form of oppression of peoples. In the 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.

73. One representative considered that the text proposed for point IV was worthy of further study.

74. According to one representative, points V and VI should show, with precision, that colonial peoples were entitled to struggle for their freedom and to seek assistance in their struggle. Another stressed that, in conformity with General Assembly resolution 1966 (XVIII), the Committee was to be guided, inter alia, by the practice of the United Nations, and referred to particular General Assembly resolutions 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. Even pragmatically, it would be short-sighted to expect the General Assembly to adopt a draft declaration which was inconsistent with its previous practice. On the

other hand, another representative pointed out that those resolutions, which had not been adopted unanimously, had been the subject of reservations by certain delegations including his own, that they had been directed towards particular situations with regard to which his country's position was clear and that the statements contained in the resolutions could not be generalized.

75. One representative emphasized with regard to point VII that it should be made clear that colonial territories could not be considered an integral part of the territory of the administering power, and another said that the point should state that their separate and distinct status was of an essential character which was ended by the exercise of the right of self-determination.

76. One delegation stated that it could agree, in a spirit of compromise, to the deletion of point VIII if certain of its features were included elsewhere.

77. One representative, emphasizing that not all the decisions emanating from the informal consultations had been endorsed by the Drafting Committee, said that no agreement had been reached on points IX and X and that not all delegations, including his own, favoured the inclusion of the kind of clause proposed. Another, speaking of the same proposal, considered such a clause as unacceptable because the right was inalienable, and because it would detract from the force of other principles, concerning the territorial integrity of States. Further, the internal aspect of secession was governed by constitutional law and was of no concern to the Special Committee. Another delegation stated that it shared the widespread view that point X should be dropped. Point IX served little purpose and could hamper the implementation of the principle.

78. In reply another representative stated that, first, he could not agree that the problem covered by the safeguarding clause contained in the second sentence of the proposal in question was one of constitutional law and not of international law, and that 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 the beneficiaries of the principle were not States but peoples. Once this was clear 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. The claim that the territorial integrity of States was safeguarded under the

## **ANNEX 102**

I. Hendry and S. Dickson, *British Overseas Territory Law* (2011) (extracts)

## SELF-DETERMINATION

The United Kingdom's relationship with its territories is based on the principle of self-determination as enshrined in the Charter of the United Nations.<sup>31</sup> Early on the United Kingdom regarded the principle as enunciated in the Charter as 'a political principle' with 'strong moral force' only.<sup>32</sup> However, in 1960 the Declaration on the Granting of Independence to Colonial Countries and Peoples,<sup>33</sup> which was adopted overwhelmingly in the General Assembly,<sup>34</sup> built on the principle contained in the Charter and declared that all peoples 'have the right to self-determination'. This resolution was not legally binding and it is doubtful that it could be regarded as reflecting a principle of customary international law given the abstentions by the United Kingdom and eight others, and the resistance around that time by the United Kingdom and others to including the right of self-determination in the instruments which would eventually become the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights in 1966. The Declaration was, however, significant since it recognised expressly the right to self-determination, whereas the Charter recognised only the principle of self-determination. The day after the adoption of the Declaration, the General Assembly adopted Resolution 1541 (XV)<sup>35</sup> entitled 'Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter'. The United Kingdom did not regard these Principles as legally binding and abstained in the voting on this Resolution. The Resolution set out circumstances in which the Decolonisation Committee would regard a Non-Self-Governing territory as having reached a 'full measure of self-government' and therefore when the obligation on the responsible State to submit reports under Article 73(e) of the Charter would cease. There were three possible scenarios for the territories: (1) emergence as a sovereign independent State; (2) free association with an independent State; and (3) integration with an independent State. There was, however, no recognition that any other constitutional relationship, even if it was the choice of the people of the territory, could be accepted as the exercise by the people of a territory of their right to self-determination, which would allow the territory to be removed from the list of Non-Self-Governing Territories.

It was this limited approach by the General Assembly to the acceptable options, and indeed the options themselves, that led the United Kingdom to abstain. The Principles elaborated the meaning of free association and integration with an independent State. In the case of the former, the associated territory had to 'determine its internal constitution without outside interference', and in the case of the latter, integration had to be on the basis of 'complete equality between the peoples of the [territory] and those of the independent country with which it [was] integrated'. The United Kingdom is of the view that the guiding principles for its relationship with its overseas territories are to be found in the United Nations Charter itself, which

<sup>31</sup> Arts 1.2 and 55.

<sup>32</sup> Statement by United Kingdom representative in UNGA, 1955.

<sup>33</sup> UNGA Res 1514 (XV) (14 December 1960).

<sup>34</sup> By 89-0 votes, with 9 abstentions, one of which was the United Kingdom.

<sup>35</sup> UNGA Res 1541 (XV) (15 December 1960).



requires the administering power to take due account of the political aspirations of the peoples of its territories, 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 development.<sup>36</sup> These principles, to which the United Kingdom attaches the utmost importance, are largely ignored by Resolution 1541(XV).

In 1966 the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted by the General Assembly. Both of these are binding treaties, and both provide that 'all peoples have the right to self-determination' and that 'by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. The United Kingdom, although it had earlier resisted the inclusion of the right to self-determination in the Covenants (which right was eventually included by majority decision), voted in favour of the adoption of both.

In 1970 the General Assembly adopted, by acclamation, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (the Friendly Relations Declaration).<sup>37</sup> In that Declaration the principle of equal rights and self-determination, whereby people had the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, was once again stated, this time without the dissenting voice of any State, including the United Kingdom. However, and perhaps most importantly for the United Kingdom, in that part of the Declaration it was also expressly recognised that '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'. Thus, for the first time, the General Assembly had acknowledged that the people of a territory could exercise their right to self-determination other than by choosing independence, free association or integration. It was therefore possible for a territory to be in another political status of its people's choosing which would satisfactorily fulfil the exercise of the right to self-determination. It may well have been this advance in the definition of what amounted to self-determination that enabled the United Kingdom in 1976 to become a party to the Covenants and at the same time extend them to some of its territories, thereby accepting the right to self-determination as a binding obligation both in relation to its own people and those of some of its overseas territories.

It is the 'other political status' freely determined by the people of the territory referred to in the 1970 Declaration which the United Kingdom Government considers has been reached by all the substantially populated territories in the exercise of their peoples' right to self-determination. In particular, the territories which have constitutions which post-date the 1999 White Paper<sup>38</sup> are all in a constitutional arrangement with the United Kingdom to which their people have agreed.

<sup>36</sup> United Kingdom statement to UNGA Fourth Committee, 2009: UNGA Doc GA/SPD/422 (5 October 2009).

<sup>37</sup> UNGA Res 2625 (XXV) (24 October 1970).

<sup>38</sup> 'Partnership for Progress and Prosperity: Britain and the Overseas Territories' (Cm 4264).

In Gibraltar and the Cayman Islands, the people of the territory supported the draft constitution in a referendum, thus exercising directly their right to self-determination. In the case of the other territories, the elected representatives of the people in each territory debated and approved the adoption of the draft constitution in the form that it was subsequently brought into force. This also amounts to an exercise of self-determination by the people of the territory through their elected representatives. Overall, no substantially populated British overseas territory has a political status which is not acceptable to its inhabitants.

The right to self-determination is mentioned in some territory constitutions, often using language drawn from the International Covenants.<sup>39</sup> As a matter of English law, it has been held that the right to self-determination under international law cannot affect the power to make constitutional provision for an overseas territory by Order in Council, because the right has not been incorporated into domestic law.<sup>40</sup>

## TREATIES

The United Kingdom is responsible for compliance by the overseas territories with obligations arising under international law, whether deriving from customary international law or from applicable treaties. In practice, this responsibility arises far more often in respect of obligations under treaties and other international agreements that have been applied to the territories by the United Kingdom Government. The territories themselves have no international legal personality and no international legal treaty-making capacity separate from that of the United Kingdom. The United Kingdom is therefore, as a matter of international law, responsible for the external relations of the territories, which includes responsibility for concluding treaties and for compliance with the international obligations under them. As a matter of constitutional law, treaty-making is an aspect of the Royal prerogative in the field of foreign affairs, and is therefore a matter for the United Kingdom.

This is not to say that it is necessarily the United Kingdom which implements the territories' treaty obligations in practice. As in the United Kingdom, under each territory's law international agreements do not automatically become part of the law of the land as soon as they are extended to the territory; to become so they have to be implemented by legislation. This might involve giving part or all of the treaty the force of law in the territory,<sup>41</sup> but this approach is not very common and more frequently it involves passing the legislation necessary to give effect to the treaty, or parts of it, in the local law. Although in some cases the United Kingdom legislates

<sup>39</sup> Falkland Islands Constitution (SI 2008/2846) s 1(a) and (b); Cayman Islands Constitution (SI 2009/1379) s 1, preamble; Gibraltar Constitution (SI 2006, III, p 11503) ch 1, preamble; St Helena, Ascension and Tristan da Cunha Constitution (SI 2009/1751) preamble, para (g); Montserrat Constitution (SI 2010/2474) preamble and s 2.

<sup>40</sup> *R (Misick) v Secretary of State for Foreign and Commonwealth Affairs* [2009] EWCA Civ 1549. See also *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] 1 AC 453 (HL) paras 64, 66, 116 and 120.

<sup>41</sup> See eg Consular Relations Act 1971 (Laws of Bermuda (1989 Revision) Title 6, Item 1), which gives the force of law in Bermuda to certain provisions of the Vienna Convention on Consular Relations.

Nor has the question of independence been strongly advocated or publicly tested in the Cayman Islands, St Helena or the Virgin Islands.<sup>3</sup>

This chapter considers the law and practice, in the light of numerous precedents, relating to the termination of United Kingdom sovereignty over an overseas territory.

## INDEPENDENCE

The consistent practice in the post-Second World War decolonisation process was to ensure that independence had the support of the people of a territory either by referendum or by means of a general election at which independence formed part of the winning party's mandate. In this way the principle of self-determination was regarded as satisfied.

In post-war practice, once a decision to move to independence had been thus taken, a target date for independence was agreed between the Government of the United Kingdom and the Government of the territory concerned. In the lead-up to that date all the necessary preparations had to be made. This frequently involved a final, pre-independence stage of constitutional advancement, sometimes called 'full internal self-government'. While the United Kingdom's ultimate legislative powers, as well as some controls on local legislative power, remained, the reserved executive powers of the Governor (and, indirectly, of the United Kingdom) were reduced to the minimum of external affairs, defence and internal security. This was regarded as politically and legally acceptable by the United Kingdom for a relatively short interim period.

The key legal steps in the granting of independence consisted of the passage of the necessary United Kingdom legislation and the negotiation and formal making of the independence constitution of the territory concerned. But there were other consequences of a move to independence, especially in the external field.

### A. Independence Legislation

In the great majority of cases the necessary United Kingdom legislation consisted of an Act of Parliament.<sup>4</sup> In the case of the independence of the six associated states, the legislation granting independence consisted of an Order in Council made in exercise of powers conferred by the West Indies Act 1967, read in conjunction with certain provisions of that Act.<sup>5</sup>

<sup>3</sup> For a summary of the interest in independence in Bermuda, Montserrat and the Turks and Caicos Islands, and the contrasting lack of interest in Anguilla, the Cayman Islands, St Helena and the Virgin Islands, see R Aldrich and J Connell, *The Last Colonies* (Cambridge, Cambridge University Press, 1998) 125–31, 138–40 and 141–43.

<sup>4</sup> Starting with the Statute of Westminster 1931 (1931 c 4), which formally confirmed the independence of the 'Dominions' of Australia, Canada, New Zealand, South Africa, the Irish Free State and Newfoundland. The latest independence Act was the Belize Act 1981 (1981 c 52).

<sup>5</sup> 1967 c 4, s 10(2) provided for termination of the status of association by Order in Council, s 11 provided for the effects of termination by divesting the United Kingdom Government of responsibility, and the United Kingdom Parliament of power, in respect of the associated State, and ss 13 to 15

The key legislative provisions to grant independence had the effect of removing the executive and legislative marks of dependence on the United Kingdom. They followed a standard form.

First, the responsibility of the United Kingdom Government for the government of the territory concerned was terminated. The standard language was: 'On and after Independence Day Her Majesty's Government in the United Kingdom shall have no responsibility for the government of' the territory.<sup>6</sup> The effect of this was to remove both executive responsibility and any power of the United Kingdom Government to advise the sovereign on legislative or executive action in the territory concerned.

Secondly, the power of the United Kingdom Parliament to legislate for the territory concerned was removed. This surrender of Parliament's power clearly required an Act of Parliament. The standard language was: 'No Act of the Parliament of the United Kingdom passed on or after Independence Day shall extend, or be deemed to extend, to [the territory] as part of its law'.<sup>7</sup>

Thirdly, as regards territories which on independence retained the British sovereign as Head of State (and therefore remained within Her Majesty's dominions), the inhibitions on the legislative power of the territory's legislature were removed.<sup>8</sup> Clearly, the grant of independence must involve the grant of unlimited power to the territory's legislature. These provisions involved the disapplication to the territory of the Colonial Laws Validity Act 1865,<sup>9</sup> the removal of any rule prohibiting repugnancy to the law of England, and the removal of any inhibition on the enactment of laws having extraterritorial operation. Schedule 1 to the Belize Act 1981 sets out the standard language on these matters:

1. The Colonial Laws Validity Act 1865 shall not apply to any law made on or after Independence Day by the legislature of Belize.
2. No law and no provision of any law made on or after Independence Day by that legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including this Act, or to any order, rule or regulation made under any such Act, and accordingly the powers of that legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Belize.
3. The legislature of Belize shall have full power to make laws having extraterritorial operation.<sup>10</sup>

The disapplication of the 1865 Act was necessary because that Act applies to 'all of Her Majesty's Possessions abroad' in which there is a legislature separate from the United Kingdom Parliament and Her Majesty in Council, with the exception only

enabled various consequential provisions to be made by Order in Council. s 17(2) required an Order under s 10(2) terminating the status of association to be approved in draft by resolution of each House of Parliament.

<sup>6</sup> Eg Belize Act 1981 s 1(1). This language was not included in the Statute of Westminster 1931 because by that time the 'Dominions' had full executive responsibility.

<sup>7</sup> Eg Belize Act 1981 s 1(2). This language is an abbreviated version of the Statute of Westminster 1931 s 4.

<sup>8</sup> These inhibitions are described in ch 4 above.

<sup>9</sup> 1865 c 63.

<sup>10</sup> These provisions reflect the Statute of Westminster 1931 ss 2 and 3.

of the Channel Islands, the Isle of Man and certain Indian territories.<sup>11</sup> A territory that remained within Her Majesty's dominions on independence remained one of 'Her Majesty's Possessions abroad'. To disapply the Act clearly required an Act of Parliament. The disapplication of any rule prohibiting repugnancy to the law of England was a precaution against the common law rule to that effect before the 1865 Act (to the extent that it existed) being held to revive upon the disapplication of the 1865 Act. The provision removing any inhibition on legislation having extraterritorial operation was arguably unnecessary, since its effect could be implied by the grant of independence itself. It was probably included as a sensible precaution.<sup>12</sup>

These provisions removing inhibitions on legislative power were not included in the independence Acts of territories which, on independence, did not have as their Head of State the British sovereign, either because they had their own monarchs or because they became republics.<sup>13</sup> Such countries were not, on independence, among 'Her Majesty's Possessions abroad' and the Colonial Laws Validity Act 1865 could therefore not apply to them. Evidently no precautionary provision regarding extra-territorial legislation was considered necessary.

The other provisions of independence Acts dealt with the consequences of independence in the law of the United Kingdom. The most important of these related to British nationality. Part of the independence settlement would be the definition of who would become nationals of the new State, and this definition could be included in the independence constitution or in ordinary legislation of the new State. The interest of the United Kingdom was to ensure that all those with a proper connection with the territory becoming independent should obtain the nationality of the new State, and that no-one would be left stateless. The independence Act provided as a general rule that anyone who at independence became a national of the new State ceased to have British nationality. But it went on to prescribe those categories of people who, by virtue of defined connections with the United Kingdom or a remaining overseas territory, retained British nationality even if they became nationals of the new State.<sup>14</sup> Provisions were also sometimes included to avoid statelessness.<sup>15</sup> There is no automaticity in these provisions. The determination of who loses and who retains British nationality on the independence of a territory is a matter of policy for the United Kingdom Government and, ultimately, for Parliament.

Other provisions made consequential changes to United Kingdom legislation to reflect the change of status of the territory concerned, for example to make nationals of the new State Commonwealth citizens in United Kingdom law and to include the new State in the definitions of 'Commonwealth force' and 'Commonwealth country' in the Acts regulating the armed forces.<sup>16</sup>

It is clear from this brief survey that the approval of the United Kingdom Parliament would be legally required if any of the remaining British overseas territories wished to move to independence. For any of those territories except Anguilla, an Act of

<sup>11</sup> See definitions of 'Colony', 'Legislature' and 'Colonial Legislature' in s 1.

<sup>12</sup> That is the conclusion in K Roberts-Wray, *Commonwealth and Colonial Law* (London, Stevens, 1966) 262.

<sup>13</sup> See, eg Kiribati Act 1979 (1979 c 27); Kiribati became a republic on independence.

<sup>14</sup> Eg Belize Act 1981 ss 4 and 5.

<sup>15</sup> Eg Solomon Islands Act 1978 (1978 c 15) ss 2(4) and 4(2).

<sup>16</sup> Eg Belize Act 1981 ss 3(4) and 4(1), and sch 2.

Parliament would be necessary to confer independence, because Parliament has so far made no provision for that eventuality. By contrast, Parliament has already made provision for Anguilla to be granted independence by Order in Council. Section 1(3) of the Anguilla Act 1980<sup>17</sup> includes the following:

(3) Her Majesty may by Order in Council make provision—

- (a) for and in connection with the attainment by Anguilla of fully responsible status;
- (b) for and in connection with the establishment of Anguilla as an independent republic;
- or
- (c) after such provision as is mentioned in paragraph (a) has been made, in connection with Anguilla becoming a republic;

and an Order so made may make such modifications of any enactment of the Parliament of the United Kingdom or of any instrument having effect by virtue of such an enactment, and such transitional or other incidental and supplementary provisions, as appear to Her Majesty to be necessary or expedient.

By virtue of this power, all the provisions traditionally included in an independence Act may be included in an Order in Council conferring independence on Anguilla, whether as a monarchy under Her Majesty or as a republic. Section 1(4) of the Act requires any such Order to be approved in draft by resolution of each House of Parliament. So a debate and approval would be required in each House.

## B. Independence Constitution

The constitution a territory will have on achieving independence has normally been set out in an Order in Council. Such an Order has been made using the powers available while the territory was dependent<sup>18</sup> or on the basis of a specific power provided in the independence Act.<sup>19</sup> While the Order (or parts of it) might be expressed to come into force earlier than the date of independence to allow transitional measures to be taken, the constitution itself would not take effect until independence day.

The terms of an independence constitution need to be agreed between the United Kingdom Government and the territory concerned. The practice has been to agree the broad lines of the constitution at a constitutional conference involving delegates of the territory and the United Kingdom, followed by detailed drafting by legal advisers. A key point in the process was the determination of whether the territory would at independence be a monarchy, with either Her Majesty or a different monarch as Head of State, or become a republic (and if so what powers the head of the republic would have). The choice was for the territory concerned.

<sup>17</sup> 1980 c 67.

<sup>18</sup> Eg Bahamas Independence Order 1973 (SI 1973/1080), made under the Bahama Islands (Constitution) Act 1963 (1963 c 56) s 1; Solomon Islands Independence Order 1978 (SI 1978/783), made under the Foreign Jurisdiction Act 1890 (1890 c 37).

<sup>19</sup> Eg Kiribati Act 1979 s 2, which enabled Her Majesty by Order in Council to make provision for a constitution of Kiribati as a republic on Independence Day; Belize Act 1981 s 2, which enabled Her Majesty by Order in Council made before Independence Day to provide a constitution for Belize to come into effect on that day, including provision for the manner in which the legislature of Belize may alter that Order or the constitution.

An independence constitution did not of course contain any of the executive or legislative controls which are common in pre-independence constitutions. As for judicial control, it was a matter for the territory concerned to choose whether to continue to have as its final court of appeal the Judicial Committee of the Privy Council.<sup>20</sup>

An important issue for an independence constitution is the procedure for its future amendment. As the territory will become sovereign, there will be no power to amend the constitution by a further Order in Council. The independence constitution must therefore include provision for its own amendment. This may involve procedures of varying complexity, with certain provisions being more firmly entrenched and difficult to change than others.

Among the many transitional provisions contained in the Order in Council by which the independence constitution was granted, a crucial one maintained in force as part of the law of the new State all the laws that had been in force there immediately before independence (with the exception of those revoked by the Order, such as the previous constitution). This saving was expressed to be without prejudice to the power of any authority under the new constitution to amend or revoke any such existing law.<sup>21</sup> In this way there were saved not only the local laws made under (or saved by) the old constitution, but also any laws made by the United Kingdom Parliament or by Order in Council which formed part of the law of the territory immediately before independence. After independence the legislature of the new State had full power to amend or revoke any such laws so saved.

Where a territory became a republic on independence, the independence Order in Council transferred to the republic the property and assets, and the rights, liabilities and obligations under the law of the territory, of the Crown in right of the Government of the territory; this was not necessary where the territory continued under the Crown after independence.<sup>22</sup>

### C. Other Consequences of Independence, especially in the External Field

A variety of other consequences were considered in the run-up to independence. Some of these related to the continuing relationship with the United Kingdom, and in many cases the assistance the United Kingdom would provide to the new State, which might include financial or technical assistance, defence arrangements or help with consular representation in third countries.

Independence involved the territory concerned becoming a sovereign State, and thus an international legal person in its own right. It therefore acquired full treaty-making capacity, the power of legation and responsibility for its own actions under international law.

<sup>20</sup> Where a territory became a republic on independence, provision for appeals to the Privy Council was made in the independence Act: eg Kiribati Act 1979 s 6. This was unnecessary if the territory retained Her Majesty as sovereign after independence.

<sup>21</sup> Eg Solomon Islands Independence Order 1978 s 5.

<sup>22</sup> Contrast eg Kiribati Independence Order 1979 (SI 1979/719), ss 9 and 10, with Solomon Islands Independence Order 1978, which includes no such provisions. Kiribati became a republic on independence, whereas Solomon Islands retained Her Majesty as Head of State.

**ANNEX 103**

Rupert Emerson, 'Self-Determination' (1971) 65 *American Journal of International Law* 459



# SELF-DETERMINATION

*By Rupert Emerson \**

Any examination of self-determination runs promptly into the difficulty that while the concept lends itself to simple formulation in words which have a ring of universal applicability and perhaps of revolutionary slogans, when the time comes to put it into operation it turns out to be a complex matter hedged in by limitations and caveats. In a different turn of phrase, what is stated in big print—as in the reiterated United Nations injunction: All peoples have the right to self-determination—is drastically modified by what follows in small print. Indeed, once the major original exercise of self-determination has been undertaken, the small print takes over and becomes the big print which establishes the new and far more restrictive guidelines.

In the same fashion, the most obvious questions which must be asked about self-determination are usually familiar and straightforward but they all tend to suffer from the same common defect of lacking unambiguous answers which can be easily adapted to meet the pressures of political demands and counter-demands. Three sets of overlapping and interrelated questions may be suggested as covering most of the ground: (1) What is the status of the principle or the right of self-determination under international law? (2) Who may legitimately claim to exercise the right of self-determination, when, and under what circumstances? (3) What are the rights and obligations of other states and international organizations in relation to self-determination and how might they be strengthened to bring an always potentially explosive procedure under control and render it more fruitful?

To the first of these questions I believe that only a somewhat equivocal answer can be given because of the elusive and contradictory nature of the issues to be dealt with—a matter which is reflected in the disagreement among the experts as to the proper verdict. The matter is complicated by the fact that the inquiry is presumably to be divided into two parts, each of which lends itself to a diversity of opinions. The wider and preliminary question is as to the law-creating powers of the organs of the United Nations, notably the General Assembly, and the second, introducing an array of quite different considerations, is the specific question as to

\* Professor of Government, Harvard University; currently Visiting Professor, University of California at Los Angeles. This article is one of the by-products of the Panel on Self-Determination organized by the American Society of International Law. It is built largely around points and problems that were raised in the course of the Panel's deliberations but it makes no pretense of dealing with all the matters considered by the Panel nor does it represent a consensus of the Panel. In the succeeding pages I have unashamedly, but gratefully, purloined ideas and arguments which were brought forth in the discussion and in papers prepared for the Panel.

what measure of legal validity the principle or right of self-determination has achieved.

There is no occasion to undertake here any extensive consideration of the United Nations as a source of international law, particularly since, with Wolfgang Friedmann, I tend to regard it as a "rather futile controversy."<sup>1</sup> If the orthodox or classic view denies law-creating powers to the General Assembly, while other approaches open up wider horizons which seem to be gaining favor, the actual differences in opinion are not likely to take the form of flat opposition between a negative and an affirmative. No one is likely to deny that principles laid down by the United Nations may under appropriate conditions set in motion forces which ultimately have the effect of bringing law into being, nor, on the other side, does anyone assert that Assembly resolutions laying down general principles automatically create international law. The effective difference of opinion is not to be stated in the confrontation of opposites but in the nature and extent of the evidence required to justify the proposition that a norm has achieved a consensus (the consent?) of the international community. Rosalyn Higgins has established a useful frame of reference in insisting that the key issue is not the non-binding character of Assembly resolutions but the cumulative effect of such resolutions taken as an indication of the emergence of rules of general customary law:

What is required is an examination of whether resolutions with similar content, repeated through time, voted for by overwhelming majorities, giving rise to a general *opinio juris*, have created the norm in question.<sup>2</sup>

More sharply defined differences of opinion appear when the general principles of United Nations lawmaking, or its denial, are applied to the concrete issue of the legal character of self-determination. Applying her own criteria, Dr. Higgins finds inescapable the conclusion that self-determination has developed into an international legal right. To the large array of cases of decolonization in which the United Nations has participated or to which it has given its blessing, she adds the overwhelming acceptance of the 1960 Declaration on colonial independence (Resolution 1514 (XV))<sup>3</sup> and its 1961 successor (Resolution 1654 (XVI))<sup>4</sup> setting up a Special Committee to oversee the application of the Declaration. Given this background she finds it academic

to argue that as Assembly resolutions are not binding nothing has changed, and that "self-determination" remains a mere "principle", and Article 2/7 is an effective defense against its implementation. To

<sup>1</sup> Wolfgang Friedmann, *The Changing Structure of International Law* 139 (Columbia University Press, 1964). His comment bore specifically on declaratory resolutions of the U.N.

<sup>2</sup> Rosalyn Higgins, "The United Nations and Lawmaking: the Political Organs," 64 *A.J.I.L.* 43 (Sept., 1970).

<sup>3</sup>U. N. General Assembly, 15th Sess., Official Records, Supp. No. 16 (A/4684), p. 66.

<sup>4</sup> *Ibid.*, 16th Sess., Supp. No. 17 (A/5100), p. 65.

insist upon this interpretation is to fail to give any weight either to the doctrine of *bona fides* or to the practice of states as revealed by unanimous and consistent behavior.<sup>5</sup>

Assessing the situation differently, Leo Gross, a hard-liner on the question of the law-creating powers of the Assembly, finds that nowhere in the Charter has the right to self-determination in the legal sense been established, and contends that

subsequent practice as an element of interpretation does not support the proposition that the *principle* of self-determination is to be interpreted as a *right* or that the human rights provisions have come to be interpreted as rights with corresponding obligations either generally or specifically with respect to the right to self-determination.<sup>6</sup>

Working with substantially the same materials of recent history and United Nations practice, Dr. Higgins and Professor Gross come to opposed conclusions. Where she finds it inescapable that a right has come into being, he holds it to be an equally inescapable conclusion that the right to self-determination "is not or not yet one which can be characterized as based on customary international law." (How large a loophole is opened by the two words "not yet"?) Acknowledging that an impressively large number of peoples have been granted or conceded self-determination, he asserts that it is not possible to supply the missing element, namely, that practice was based on a sense of legal obligation:

On the contrary, the practice of decolonization is a perfect illustration of a usage dictated by political expediency or necessity or sheer convenience. And moreover, it is neither constant nor uniform.<sup>7</sup>

It is certainly the case that since the start of the United Nations a highly significant change has taken place in the expectations of broad and important elements of the international community concerning self-determination, but it is a troublesome matter to attempt to define and delimit the nature and extent of the change. Evidently there is disagreement as to what evidence should be taken into account and how it should be weighted: the practice which one expert holds to be "unanimous and consistent behavior" the other regards as "neither constant nor uniform." On this score it must be a relevant consideration that the colonial Powers and a number of states supporting them have not accepted the basic proposition that all colonialism is illegitimate nor the corollary proposition that the colonial peoples are entitled to as speedy as possible an exercise of their right of self-determination with independence as the strongly favored

<sup>5</sup> Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* 101-102 (Oxford University Press, 1963). Muhammad Aziz Shukri, *The Concept of Self-Determination in the United Nations* 338-350 (Damascus, Syria, 1965), also inclines to accept self-determination as a legal right, but he qualifies his acceptance by pointing to the many political considerations, based on national interest, which circumscribe its application.

<sup>6</sup> Leo Gross, "The Right of Self-Determination in International Law," in *New States in the Modern World*, edited by Martin Kilson (a forthcoming publication of the Harvard University Press.)

<sup>7</sup> *Ibid.*

goal. How widespread the hesitation is to accept the verdict of the anti-colonial majority may be seen in that nine states, including the United States, the United Kingdom, France, Portugal, and Australia, abstained even in the vote which, in a surge of emotion, brought unanimous adoption of the centrally important Resolution 1514 (XV) of 1960, the Declaration of colonial independence. In the aftermath of this Declaration what may be seen as the annual catch-all anti-colonial self-determination resolutions roused much more objection. Thus, for example, Resolutions 2105 (XX) of 1965<sup>8</sup> and 2189 (XXI) of 1966<sup>9</sup> were adopted by votes, respectively, of 74-6-27 and 76-7-20, the negative votes and abstentions deriving in part, perhaps, from the fact that these resolutions also added opposition to military bases in colonial territories and a denunciation of colonial rule and *apartheid* as a threat to the peace and a crime against humanity.

Where so substantial a body of doubt and opposition exists, including major Powers and those still possessed of colonies, the existence of a rule of international law cannot lightly be assumed. The general climate of opinion has certainly turned sharply against colonialism, and the administering Powers agree on the need for an orderly end of the colonial relationship,<sup>10</sup> on their own terms; but that all dependent peoples have here and now the right to determine their own destinies is denied by the states which remain in charge of them. If, as proposed by Rosalyn Higgins and others, the expectation of the international community as to what constitutes lawful behavior is a key criterion in determining the existence of new rules of international law, it is obviously essential to know how the international community is composed and what major portions of that community may be excluded without impairing its status as a single and solidary body.

The preceding paragraphs have already, prematurely but unavoidably, introduced another key element into the discussion: the virtually total concentration of attention since World War II, as far as self-determination is concerned, on the colonial peoples. If the right to self-determination is to be made an operative one under international law and an orderly one within the confines of an organized international society, an essential condition is surely that the peoples or territories to which it applies are demarcated with at least reasonable clarity;<sup>11</sup> but all commentators on self-determination have pointed out that neither "people" nor "nation" has any generally accepted meaning which can be applied to the diverse world of political and social reality.

One obvious version which can be disposed of without further ado is

<sup>8</sup> U. N. General Assembly, 20th Sess., Official Records, Supp. No. 14 (A/6014), p. 3.

<sup>9</sup> *Ibid.*, 21st Sess., Supp. No. 16 (A/6316), p. 5.

<sup>10</sup> Save Portugal, which clings to the contention that it has no colonies.

<sup>11</sup> "The more strictly the people to whom it is to be applied are defined, the more possible it is to classify self-determination as a right which can be stated with reasonable precision and given institutional expression." Harold S. Johnson, *Self-Determination within the Community of Nations* 55 (Leiden, 1967).

the notion that when United Nations resolutions or the first articles of the two Covenants on Human Rights assert that "All peoples have the right to self-determination," they mean what they say, *i.e.*, that all peoples have the right. Anyone tempted by so simple an interpretation is invited to consult the Germans, Koreans, and Vietnamese; the Biafrans or Ibos, the south Sudanese, the Baltic peoples, the Formosans, the Somalis, and the Kurds and Armenians.

There have been two major periods when self-determination has come to a substantial measure of international acceptance in the sense of being an operative right or principle, but in each instance only for a relatively closely defined category of peoples or territories. In the first, at the close of World War I, Woodrow Wilson and others proclaimed the right of self-determination in universal terms, but for practical purposes with a concentration on the European territorial settlement following the war. In substance this involved particularly the destiny of the peoples in Eastern Europe, the Balkans, and the Middle East who were directly affected by the defeat or collapse of the German, Russian, Austro-Hungarian, and Turkish land empires. In the second, following World War II, the focus of attention has been the disintegration of the overseas empires, which had remained effectively untouched in the round of Wilsonian self-determination.

A common bond might be found between the two in that each involved, to use contemporary United Nations phraseology, "subjection of peoples to alien subjugation, domination, and exploitation." The ground rules that were actually invoked, however, could be seen as precariously in contradiction of each other, although in each instance it was assumed as a basic principle that once the first act of self-determination had been undertaken, no further recourse to the right was allowable. The point of contradiction lay in the fact that the peoples involved in the Wilsonian period were ethnic communities, nations or nationalities primarily defined by language and culture, whereas, in the present era of decolonization, ethnic identity is essentially irrelevant, the decisive, indeed, ordinarily the sole, consideration being the existence of a political entity in the guise of a colonial territory. Thus two quite different and mutually incompatible definitions of the "people" entitled to exercise the right of self-determination marked the two periods: in the first, politically shapeless ethnic communities were authorized to disrupt the existing states; in the second, the inhabitants, however haphazardly assembled by the colonial Power, take over pre-existing political units as independent states, but with the firm prescription, reiterated in substance under various auspices, as in Resolution 1514 (XV), that

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.<sup>12</sup>

Thus, in the new dispensation, precisely the condition which was held

<sup>12</sup> Cited note 3 above.

to justify self-determination in the earlier period, *i.e.*, that ethnically different peoples were subjected to alien rule, is now wholly unacceptable as a justification once the colonial territory has achieved its independence.<sup>13</sup> It would, however, be exceedingly difficult to establish that, say, the Ibos are ethnically closer to the Hausa-Fulani of Northern Nigeria, the south Sudanese to the northern Sudanese, or the Papuans of West Irian to the Javanese than were the Czechs to the Austrians or the Poles to the Russians. In either instance, once the newly created or newly independent state is in existence, no resort to further self-determination is tolerable.

It will be evident that what is in part at stake here is the vexed issue as to whether the right to self-determination includes a right of secession. Despite the fact that the self-determination of the World War I peace settlement seems clearly to have involved secession, and that it is nonsense to concede the right to "all peoples" if secession is excluded, the customary verdict has been that self-determination does not embrace secession, at least as any continuing right. The reason is too obvious to require elaboration: except in the rarest of circumstances no state will accept the principle that at their own choosing some segment of its own people will be free to secede either to become independent or to join a neighbor. Similarly, no organization of states is in the least likely to lay down the law that its members must yield if they are challenged by an internal demand for self-determination.

This principle was vigorously asserted by Secretary General U Thant when he was asked at a press conference on January 4, 1970, whether there was not a deep contradiction between the people's right to self-determination as recognized by the United Nations and the attitude of the Nigerian Government towards Biafra. The Secretary General's reply, which included a reference to the United Nations' successful effort to prevent Katanga's secession, affirmed that when a state joins the United Nations, there is an implied acceptance by the entire membership of its territorial integrity and sovereignty. He continued to say:

So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State.<sup>14</sup>

<sup>13</sup>Rosalyn Higgins, having found self-determination to be an international legal right but one whose extent and scope is still open to some debate, defined it as "the right of the majority within an accepted political unit to exercise power." *The Development of International Law through the Political Organs of the United Nations* 103-105. This serves to embrace the current anti-colonial phase of self-determination and the Hungarian rising against Soviet domination, but it runs counter to the post-World War I version. It also risks being out of tune with what may well be the next incarnation of self-determination when the peoples now subjected to what they regard as alien rule in states composed of heterogeneous elements rise up to demand the right to rule themselves. Her assertion that, in the present political climate, "the right of self-determination is likely to continue to be presented in a racial context" is more plausible than the contention that traditionally the term self-determination referred to the desire of a *race* for independence. *Ibid.* 105-106.

<sup>14</sup>7 U.N. Monthly Chronicle 36 (Feb., 1970). The Special Committee on Prin-

If the right of secession is eliminated and the maintenance of the territorial integrity of states takes priority over the claims of "peoples" to establish their own separate political identity, the room left for self-determination in the sense of the attainment of independent statehood is very slight, with the great current exception of decolonization. It need scarcely be added that the transition from colonial status to independence is not regarded as secession, whether or not it is achieved by force of arms, but rather as the "restoration" of a rightful sovereignty of which the people have been illegitimately deprived by the colonial Power concerned. On the theory that colonialism is permanent aggression, which was put forward by India at the time of taking over Goa from Portugal, the imperialists have and have had no rights, and therefore no issue of secession can be raised. In the Goan instance the people formally returned to the India from which they had never been lawfully separated; in the case of other colonies the latent sovereignty of the people is made manifest as the usurpers are overthrown or withdrawn. The anti-colonialists denounce all colonialism as illegitimate, even though Article 73 of the Charter appears clearly to contemplate the exercise of a measure of control by the administering states.

The end of colonialism is, however, near at hand, the great bulk of the colonial peoples already having achieved independence or otherwise come out from under alien rule, and it has so far proved impossible to determine what category of peoples, if any, will next be designated as the ones entitled to call upon the right of self-determination. Useful as it would be to establish where the lightning may strike next, in order to make some advance planning possible, we have little more than guesswork to rely on. While it appears inevitable that demands for a right to determine their own separate destinies will be made by "peoples" embraced within the heterogeneous polities of the third world, as well as of the first and second, there can be no present assurance that the international community will give them, or some defined portion of them, the kind of blessing which it has given the colonial peoples.

It appears to be the usual interpretation of self-determination that it involves accession to independent statehood, but account must also be taken of the claim which is made to what may be called internal self-determination, as contrasted with the external self-determination associated with international political status. A convenient phrasing of it is to be found in the General Assembly's Declaration on Non-Intervention (Resolution 2131 (XX)):

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principles of International Law concerning Friendly Relations and Cooperation among States, in dealing in its Report with the principle of equal rights and self-determination of peoples, which it accepted as a principle of international law, took a firm stand against any action which would dismember or impair the territorial integrity or political unity of independent states. U.N. General Assembly, 25th Sess., Official Records, Supp. No. 18 (A/8018), 1970, p. 69. For self-evident reasons the Organization of African Unity, in its Charter and elsewhere, has been particularly firm in its insistence on the maintenance of sovereignty and territorial integrity and on banning interference in internal affairs.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.<sup>15</sup>

The Declaration, for the moment leaving the realities of international politics behind it, denies the right of any state to intervene, directly or indirectly, in the internal or external affairs of any other state or to use economic, political, or any other type of measures in order to secure advantages of any kind from another state or to subordinate the exercise of the latter's sovereign rights.<sup>16</sup> The temptation to vote with the majority on the side of virtue obscures on occasion the need for precision of language and realism of prescription.

It appears to this writer that self-determination in this phase, as contrasted with the positive action implied by external self-determination, is essentially a negative matter, and as such properly dealt with in a declaration on non-intervention. With one substantial exception, no positive step is required, nor is any particular kind of government or social, economic, or cultural system called for or favored; all that is needed is that there not be external interference which impairs the ability of the state freely to make its own choices. All states and international organizations are asked to contribute political and material support to the winning of independence by colonial peoples; in relation to internal self-determination they are asked only to abstain from action of any kind which influences the domestic decision of other states. Any effort on the part of states or organizations to become involved in the affairs of other sovereignties in order to promote one or another decision would seem to be an evident violation of the ban on intervention. For good or evil, such intervention is, of course, an old-established and continuing feature of international life, whether in soft-spoken and covert fashion or in such open actions as the United States in relation to Cuba and the Dominican Republic, the Soviet Union in Hungary and Czechoslovakia, or Sukarno's Indonesia in its armed "confrontation" with Malaysia.

Wholly comprehensibly in the light of the arrogant imperialist interventions of the not distant past and despite the unlikelihood that it will be lived up to, total non-intervention has been accepted by the United Nations as one of the highest of principles. A still higher principle, however, has been established by the United Nations which overrides the right of internal self-determination and invalidates the obligation to ab-

<sup>15</sup> U.N. General Assembly, 20th Sess., Official Records, Supp. No. 14 (A/6014), p. 11; 60 A.J.I.L. 662 (1966).

<sup>16</sup> "If it becomes common for Assembly resolutions of this nature to be passed by large majorities only to be immediately ignored, then the seriousness with which the Organization deserves to be taken will have been significantly downgraded." David A. Kay, "The Impact of African States on the United Nations," 23 *International Organization* 32 (Winter, 1969).

It deserves also to be noted that in a distinctive burst of honesty Malta declined to participate in the unanimous vote for the Declaration on the ground that it was being openly violated by several states which voted for it, and that they were unlikely to modify their policies. 2 U.N. Monthly Chronicle 23 (Jan., 1966).



stain from interference in what would otherwise be the domestic affairs of other states. This loftiest of principles is covered in the Declaration on Non-Intervention by the injunction that "all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations." The Special Committee on Friendly Relations has also debated these issues at length and combined in the Declaration unanimously adopted on September 15, 1970, the assertion of equal rights and self-determination of peoples, the inalienable right of every state to choose its political, economic, social, and cultural systems without interference, and the duty of states to eliminate all forms of racial discrimination and religious intolerance.<sup>17</sup>

In addition to the right or obligation to intervene to bring colonialism to an end, the United Nations organs have repeatedly asserted the necessity to intervene to overthrow the open and full-fledged racial discrimination of the *apartheid* regime in South Africa, also applied in Southwest Africa, and the close approximation to it which the white minority has instituted in Rhodesia since the Unilateral Declaration of Independence of 1965. In these instances, and presumably any others which might be found comparable to them, the inalienable right of a state to choose its social-political system vanishes and is replaced by the international mandate to secure a non-discriminatory regime.<sup>18</sup> It has been suggested that the contradiction between the doctrine of non-intervention and the attack upon *apartheid* is greatly mitigated if Resolution 2131 (XX) is read as being subject to the obligations imposed on states by the Charter. Unless intervention, however, is assumed by definition to involve the threat or use of force, bringing pressure of one sort or another to bear on a state does not appear to be outlawed by the Charter. As far as human rights and fundamental freedoms are concerned, even if it be conceded, as it must be, that *apartheid* constitutes an unmistakably flagrant violation of these rights and freedoms, reference to the Charter could not by itself furnish an answer as to whether Article 1, par. 3, or Article 2, par. 7, takes priority.

Racial discrimination is assumed by the contemporary international consensus to be a basic evil wherever it occurs and in whatever guise, but it becomes the paramount evil when the majority of the people are wholly dominated by a minority of another race. Under such circumstances self-determination comes into play only when the majority achieves freedom to express its will and make it effective. Such a stand, with its special reference to white-ruled southern Africa, does not necessarily imply any general endorsement of majority rule, as, for example, in relation to rule by a military junta after a coup, but is limited to situations in which *apartheid* or some approximation thereof is practiced by the dominant racial minority. Nothing but total scorn could greet the well-advertised insistence

<sup>17</sup> For the text of the Declaration see the Report of the Special Committee, cited note 14 above, pp. 62-71; also reprinted in 65 A.J.I.L. 244 (1971).

<sup>18</sup> See Alexander J. Pollock, "The South West Africa Cases and the Jurisprudence of International Law," 23 International Organization 786 (Autumn 1969).

of the South African Government that its doctrine of *apartheid*, under the label of separate development, is in fact intended to promote the self-determination of each of the country's peoples.

In the deliberations of the Special Committee on Friendly Relations on the Declaration to be presented to the Assembly for adoption, the United States proposed the inclusion of the following article in the section dealing with self-determination:

The existence of a sovereign and independent State possessing a representative Government, effectively functioning as such to all distinct peoples within its territory, is presumed to satisfy the principle of equal rights and self-determination as regards those peoples.<sup>19</sup>

While this seems a mild and temperate statement to which it is difficult to take exception, it might, if it had been adopted, have turned out to raise some troublesome issues. Would it, for instance, justify recourse to self-determination on the part of peoples who are not, or who claim not to be, effectively represented in and by their government; and, as in all such questions of self-determination, who is entitled to make the relevant judgments and decisions? Is it a matter of international concern that representative governments do not exist in many countries, and what, if anything, should be done about it? As a general proposition it might be suggested that the more criteria are laid down internationally as higher principles conditioning the right of states to full and free internal self-determination, following the precedent of the elevation of the condemnation of *apartheid* to the status of a super-principle, the greater will be the temptation—or even, at a further remove, the obligation—to intervene.

One other problem of self-determination which has come to be of considerable current significance concerns the multiplicity of actual or potential ministates now coming into existence. In the 19th century it was widely assumed as both the desired and the expected outcome that the new principle of nationality would enable the larger nationalities to consolidate and establish strong and stable states, while the lesser peoples, seen as having made no mark upon history, would either be absorbed or fade into the background. The emergence of Germany and Italy was taken as setting the pattern, and the "Balkanization" which lay ahead was not adequately foreseen.<sup>20</sup> The round of self-determination which followed

<sup>19</sup> U.N. Doc. A/AC.125/L.75 (Sept. 15, 1969), p. 4. The U.K. submitted an almost identical text, p. 6. In the Declaration adopted by the Special Committee there survived from these proposals the statement that states which complied with the principle of equal rights and self-determination, as described in the Declaration, were "thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour." Report of the Special Committee 69.

<sup>20</sup> Professor Karl W. Deutsch has suggested that "Scandinavianization" be substituted for "Balkanization," thus producing an immediate change in implication and attitude. The derogatory sound of "Balkanization" obscures the very real possibility that the construction or maintenance of larger heterogeneous political units lumping together peoples without common bonds may produce disastrously costly results, of which Nigeria is the most recent unhappy example. Furthermore it has been cogently argued that the Austro-Hungarian Empire was not necessarily the ideal political solution and that balkanizing the Balkans was a step forward, not a step backward.

World War I represented some further fragmentation but the great eruption of small peoples, laying claim to self-determination and ranging from lesser middle-sized to infinitesimal, broke out around the globe in the later phases of the process of decolonization. The British, indefatigable collectors of bits and pieces of empire,—miscellaneous islands, coaling stations, bases, and enclaves—were the major contributors, but others were also somewhat perplexed proprietors of tiny territories or, on occasion, of relatively large territories with tiny populations and meager known resources.<sup>21</sup>

As with most issues of self-determination, the questions which are likely to be asked are simple, the answers complex or non-existent. The simplest question of all, to which only an arbitrary answer can be given, is: How small is small?

Small peoples are as much entitled to self-determination as large ones, but it is also evident that at some level a point of absurdity is reached as when islands such as Nauru and Anguilla, with a population of a few thousand each, are envisaged as taking a full place in the international society as sovereign states. It may be that, apart from any speculation as to whether it is to their advantage or disadvantage, they could manage to maintain life at some level if left wholly adrift on their own, but their ability to take an active and normal share in the life of the international community would be drastically limited.

An important part of the problem was raised by Secretary General U Thant in the Introduction to his Annual Report in September, 1967, when he remarked that, for all the desirability of universality of membership in the United Nations, "the line has to be drawn somewhere." Accepting the complete legitimacy of even the smallest territories attaining independence through self-determination, he added that

it appears desirable that a distinction be made between the right to independence and the question of full membership in the United Nations. Such membership may, on the one hand, impose obligations which are too onerous for the "micro-states" and, on the other hand, may lead to a weakening of the United Nations itself.<sup>22</sup>

As far as the United Nations is concerned, the precedents, disturbing to many participants and observers, have come to be so generous to ministates as to make future restrictions difficult unless firm decisions are both taken and enforced, laying down rules as to the size of states to be admitted as Members. The present low point is that of the Maldivé Islands, admitted in 1965 with a population at that time of some 100,000, its nearest rival among the recent "Third World" Members being Equatorial Guinea, admitted three years later with 272,000 people. The precedents were already well established, however, by the membership in the League of Nations of the Central American and Caribbean Republics and the admission to the

<sup>21</sup> See David W. Wainhouse, *Remnants of Empire* (New York and Evanston, 1964), and the voluminous documentation of the Special Committee of 24, dealing with the implementation of the Declaration on colonial independence.

<sup>22</sup> U.N. General Assembly, 22nd Sess., Official Records, Supp. No. 1A(A/6701/Add. 1), p. 20.

United Nations in 1946 of Iceland with 285,000. A UNITAR publication of 1969 lists a total of 17 U.N. Members with populations of less than one million,<sup>23</sup> and a number of others hover not far about that figure.

There is no occasion to elaborate here on the well-worn theme of the imbalance within the United Nations and other international organizations between states with populations running to hundreds of millions and those with a few hundred thousands or less. It is obviously necessary, however, to carry further and to deepen the exploration both of the acceptable alternatives to independence and of the ways in which the United Nations and other international bodies might be of service to small peoples without the assumption that the latter must acquire sovereign independence and full United Nations membership. On the first score a difficulty that must be taken into account, although it is certainly not insuperable, is that the Committee of 24, looking to speedy decolonization under Resolution 1514 (XV), has strongly tended to equate the proper exercise of the right of self-determination with a decision for independence. Particular exceptions have been approved as legitimate by the Committee and the Assembly itself, as in the case, for example, of the Cook Islands, whose desire for continued ties with New Zealand was accepted with surprised dismay, but the basic assumptions of the Committee and the Assembly are reflected in the standard bracketing together of self-determination and independence.

To the pleasure of the United States and its associates, the 1970 Declaration of the Special Committee on Friendly Relations held in the section dealing with the equal rights and self-determination of peoples that it accounted as a legitimate outcome of self-determination not only independence but also association or integration with an independent state or the emergence into any other political status freely accepted by a people.<sup>24</sup> By now a number of alternative relationships between independent states and small peoples and territories have been worked out which provide self-government and at the same time on a freely agreed basis secure the benefits of association with a larger state and presumably representation by it in the world at large. Despite the advantages which such co-operative arrangements can bring with them, it has been the inclination of a number of members of the Committee of 24 to ask that any act of self-determination which calls for less than independence should be subject to reversal by a later and definitive act of self-determination which would record the people's demand for independence. As they see it, self-determination is an inalienable right to which access must remain available until the ultimate option of independence has been exercised.

<sup>23</sup> Status and Problems of Very Small States and Territories (UNITAR Series, No. 3), pp. 73-74. The population figures cited are taken from the relevant issues of the Yearbook of the United Nations and the UNITAR Status and Problems.

<sup>24</sup> A number of Assembly resolutions make substantially the same point. Res. 1541 (XV) of 1960, for example, states that self-government can be attained through emergence as an independent state, or through free association or integration with an independent state; but the deep-rooted preference for independence generally shines out undisguised.

The ills and shortcomings characteristic of small peoples may be significantly eased by the contributions which international organizations can make to their well-being and even to their survival in an interdependent and often threatening world. If full membership in the United Nations is to be denied to peoples whose numbers and such other attributes as may be internationally specified fall below some agreed standard, there remain a variety of other possibilities. These include some version of associate membership (presumably non-voting) in the United Nations, associate or full membership in specialized agencies and relevant regional organizations, and the creation of some body (an Office of Small States and Territories?) within the United Nations or outside it, to which would be assigned responsibility for seeing to it that small peoples are kept abreast of developments in spheres germane to their interests and particularly of programs which would help them to overcome the deficiencies deriving from their small size.<sup>25</sup> The more such relationships remain in the sphere of technical advice, the less controversial they would be, but they would inevitably also move into spheres with manifest political implications and thus be increasingly likely to stir up trouble.

A political issue of the first order of importance concerns the provision of defense and security for small states and territories. By no stretch of the imagination can they be assumed to have the resources which would enable them to defend themselves against any serious attack. The UNITAR study of very small states realistically remarks that, if all U.N. Members lived up to their Charter obligations, no special guarantees would be necessary, but the possibility of non-observance leads to the need for further forms of safeguards.<sup>26</sup> This issue was most persuasively presented to the United Nations in relation to the three High Commission Territories embraced within South Africa as they approached independence. The danger that one or more of the three might be forcibly swept within the *apartheid* regime led to a solemn warning to the South African Government by the General Assembly in Resolution 1954 (XVIII) of 1963 that "any attempt to annex or encroach upon the territorial integrity of these three Territories shall be considered an act of aggression."<sup>27</sup> It must, however, be recognized that this or any other type of international arrangement safeguarding the independence of states or territories is subject to all the frailties and vagaries of collective security which stand out so clearly on the historical record.

Although there may be a substantial number of common issues, a different set of problems appears when the people or territory under consideration is not independent. Of the many varieties of lack of independence, two main types must be distinguished: a people who occupy and lay claim to a reasonably well defined territory which might be separated from the state of which it forms a part, such as the South at the time of

<sup>25</sup> See UNITAR, *Status and Problems*, particularly Pt. II, Chap. II; and Patricia Wohlgenuth Blair, *The Ministate Dilemma* (Carnegie Endowment for International Peace, Occasional Paper No. 6, 1967). <sup>26</sup> UNITAR, *op. cit.* 157.

<sup>27</sup> U.N. General Assembly, 18th Sess., Official Records, Supp. No. 15 (A/5515), p. 8.

the American Civil War, Biafra, or Nagaland, and a people intermingled with the dominant majority people, such as the Blacks in the United States, the Chinese in Malaysia or Indonesia, or the Asians in East Africa. Where there is such intermingling, no form of self-determination, short of mass migration, can be invoked to satisfy such demands as the minority community may make for recognition of its separate identity and its human rights. In these circumstances, the aim must be to achieve non-discriminatory acceptance into the general citizenry with, perhaps if it is desired and proves negotiable, such an admixture of minority rights as will work to preserve the distinctiveness of the community involved.<sup>28</sup>

Given a geographically distinct territory, secession or some form of territorially based self-government is at least conceivable, whatever the political complications, particularly if the territory is wholly separate from the state concerned, as in the case of an island or overseas dependency. Small colonies and peoples, however, have scant opportunity to arrive at decisions of their own and are likely to be subject to the determinations of the metropolitan Power to which they attach. The singularly pertinent case of minuscule Anguilla, which, exposing Britain to global ridicule, even underwent British military occupation, challenged the conscience of the world to find some better answers and procedures than those immediately available. With no desire for a complete breach with London, Anguilla found in the ordinary course of events no outside authority to which it might turn for aid and advice and no forum in which to plead for a change in the London-imposed formula for decolonization, including the unwelcome merger with St. Kitts and Nevis. Its leaders saw no alternative to an otherwise nonsensical declaration of independence which not only dramatized its case, at some midpoint between farce and tragedy, but promptly also gave it some measure of international standing and removed it from the ranks of the untouchables as far as the United Nations and other international organizations were concerned.

It is to avoid a situation such as this that Roger Fisher and others have proposed an overhaul of the existing machinery and assumptions. The essence of the proposals made by Professor Fisher is a plea for flexibility which would make possible a wide array of fluid arrangements to meet the varying needs of small peoples and territories. Thus he called for recognition that

independence and political freedom are too important to be confined by sharp categories. Self-determination is not a single choice to be made in a single day. It is the right of a group to adapt their political position in a complicated world to reflect changing capabilities and changing opportunities.<sup>29</sup>

<sup>28</sup> For an illuminating discussion of this problem as well as of a number of other points relevant to self-determination, see Chap. 5, "Self-Determination and Minority Rights," in Vernon Van Dyke, *Human Rights, the United States, and World Community* (New York, London, Toronto, 1970).

<sup>29</sup> Roger Fisher, "The Participation of Microstates in International Affairs," 1968 Proceedings, American Society of International Law 166 (Washington, D. C., 1968).

Turning away from the traditional rigid alternatives, he urged a deliberate blurring of the distinction between independence and dependence in the hope both of lessening the demand for full sovereignty and of opening to small places access to the advice, facilities, and services which they are unable to furnish for themselves. In explicit contrast to the Committee of 24 with its bias in favor of independence, his proposed Office of Small States and Territories in the United Nations would seek the practical solution of problems on their merits and accept from the outset the assumption that small states will normally want to have a close relationship with some large state, perhaps the former colonial Power, and also have direct access to the United Nations.

For territories which have crossed the threshold to independence it should not be too difficult to work out such programs, but to apply the same technique to those which remain dependent is obviously to risk serious trouble. To be effective the new instrumentalities must constitute a direct challenge to the sovereignty of the state over what it holds to be its own land and people. The more effective they would be in promoting the right to self-determination, the more direct and objectionable the challenge, although by now the process of decolonization is so far advanced that for many small territories the colonial Powers might welcome expert and impartial international advice as to how to bring the colonial relationship to a mutually satisfactory end.<sup>30</sup>

For large territories or small, whether it concerns Anguilla or Angola, Gibraltar or Guam, Brittany or Quebec, Biafra, the south Sudan, or Lithuania, the claim of an international authority to intervene in the determination of political affiliation threatens to bring down on its head the wrath of any country directly affected. A parallel might be drawn with the attempt in the interwar decades to maintain a system for the international protection of minorities, which achieved not very impressive results, was resented by the states to which it applied, and was abandoned in the reconstruction of the world after 1945. That minorities deserve protection when they are denied the human rights supposedly theirs and that some peoples have what seem excellent claims to a separate political identity are propositions which it is impossible to deny. There is ample room, however, for skepticism that the existing system of sovereign states has evolved to the point where its members would be prepared to subject themselves to intervention on behalf of minorities or to advice given directly to peoples within their jurisdiction encouraging these peoples to seek self-government or independence.<sup>31</sup>

<sup>30</sup> Professor Fisher explicitly recognized that in order to have its advice accepted as expert and impartial, without political preconceptions, the "U.N. would have to change quite radically its orientation to small places," departing from the rôle hitherto played by the Committee of 24 "as an international lobby for absolute independence regardless of the consequences." *Ibid.* 168-169. How real is the prospect that the U.N. could divorce itself from politics and political preconceptions for such purposes?

<sup>31</sup> It deserves to be noted that promptly following Professor Fisher's paper at the 1968 A.S.I.L. meeting, Elizabeth Brown of the Office of U.N. Political Affairs, De-

Particularly where it involves the emergence of new states on the world scene or the reshaping of old ones, self-determination is obviously a matter of legitimate international concern. The problem, to which no satisfactory answer has as yet been produced, is how one sets about regularizing and bringing under international control what this writer has elsewhere described as essentially a right of revolution, justified by an appeal to principles of higher law.<sup>32</sup> That the overwhelming U.N. majority has accepted it as substantively a right of revolution appears to be confirmed by the repeated Assembly injunction that all states should provide moral and material assistance to the struggle for independence of the national liberation movements, some of which are carrying on open warfare. Self-determination has from time to time been referred to as the right of the winner in a Darwinian conflict for survival. Up to now the success or failure of an attempt at self-determination represented no special merit or lack of it but, in success, good fortune and effective strength, including external assistance, or, in failure, bad fortune and the lack of the force needed to put it across. The American Revolution won freedom from Britain; the South failed to win the Civil War; Jinnah and the Moslem League made life difficult enough for the British and the Indian National Congress to secure Pakistan's separate existence; the Ibos lacked the power to sustain Biafra's independence; Israel fought its way to statehood; Indonesia and Algeria won independence; but Angola and Mozambique have so far failed to break the Portuguese colonial grip.

It would be a wholly new departure if norms were to be established by which claims to self-determination could be evaluated and the Assembly, the Security Council, or some other newly created international agency were empowered to take authoritative decisions, implemented in part, perhaps, through the elaboration of a collective process of recognition by the international community.<sup>33</sup> Because of the great variety of situations, problems and claims, the decisions would undoubtedly have frequently to

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partment of State, called attention to "some serious problems" involved if the U.N. were to offer political and constitutional advice to an area under the administration of a sovereign state. On the basis of past experience, it was her conclusion that the metropolises would find very little more than technical assistance in the narrow sense acceptable. *Ibid.* 180.

<sup>32</sup> See the writer's *Self-Determination Revisited in the Era of Decolonization* (Occasional Paper No. 9, Center for International Affairs, Harvard University, 1964). Rosalyn Higgins sees the principle of self-determination as having, "over the last 15 years, led to the widespread view that there may now be a legal right of revolution; that is to say, that under the principle of self-determination the peoples of a territory must be allowed—if absolutely necessary by forceful means—to replace the government by one of their own choice. This principle finds express approval in the resolutions passed on the Hungarian intervention." *The Development of International Law through the Political Organs of the United Nations* 211.

<sup>33</sup> The Secretary General has in at least three recent instances been called upon to play a significant rôle in issues of self-determination: in 1963, certifying the willingness of the people of Sabah and Sarawak to join Malaysia; in 1969, joining in supervising "the act of free choice" of West Irian in remaining a part of Indonesia; and in 1970, undertaking to ascertain "the wishes of the people of Bahrain" at the request of the United Kingdom and Iran.



be of an *ad hoc* "political" nature, but various criteria have been suggested which might be drawn upon to provide norms for judging claims. A frequently mentioned criterion for a favorable decision is the denial of human rights—a peculiarly pertinent criterion in view of the proposition often put forward that all other human rights rest on the right of self-determination—but it is also evident that other means of safeguarding human rights than the drastic remedy of independence should be explored.

On the face of it, it is desirable that the United Nations be empowered to play a larger rôle in relation to the always hazardous issue of self-determination, granted—which is not necessarily self-evident—that to do so would be to ease rather than to intensify international tensions and to promote human well-being. The realistic issue is still not whether a people is qualified for and deserves the right to determine its own destiny but whether it has the political strength, which may well mean the military force, to validate its claim. Have states and peoples evolved sufficiently to be prepared to accept the substitution of international decisions, or at least of international intervention and good offices, for the old-established trial by battle? In the current phase of self-determination the Committee of 24 and the Assembly have insisted on the desirability of United Nations participation in the transition of colonies to independence or some other approved status, but they have met with frequent rebuffs by the colonial Powers who are even more firmly insistent on setting their own timetable and their own style and sequence of events. This does not augur well for the future, and all the less so if the ending of the process of decolonization means that hereafter self-determination headed toward independence can only mean secession from existing states. It might also be asked as possibly a highly relevant consideration: Assuming that the remaining bits and pieces of empire are tidied up to the general satisfaction of the Committee of 24 and the Assembly, leaving still the grave problems of white-dominated southern Africa, will the large array of new countries tend to lose interest in self-determination, or, insofar as they retain interest, seek rather to safeguard their present boundaries and jurisdiction than to risk them by empowering an external authority to busy itself with the dynamite of self-determination? Continued white minority rule in southern Africa, condemned as an evil of paramount importance, will keep the slogans and the cause of self-determination alive, but it must also be recognized that this is a special and distinctive issue. The demand for self-determination there has no necessary implication of support for self-determination elsewhere and certainly not for what seems likely to be its next major incarnation in the clamor of peoples trapped in pluralistic states in which they have no dominant share to take charge of their own destinies.

## **ANNEX 104**

Leo Gross, "The Right of Self-Determination in International Law," in  
Kilson (ed) *New States in the Modern World* (1975) 136 (extract)

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## 7. The Right of Self-Determination

### Law

Leo Gross

This chapter is exclusively concerned with the status of the concept or right of self-determination in the sense of the right of an entity—a people or nation or another group—to establish itself as an independent state. Consequently the right of a people already organized into a state to choose its form of government—democracy, autocracy, and so on—or to give itself a political or economic system or to adopt a certain ideology is left out of account. This right is well established in international law although its scope and range have not been precisely defined. The Draft Declaration on Rights and Duties of States prepared by the International Law Commission in 1949 states in Article I: "Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government."<sup>1</sup>

More recently the General Assembly adopted Resolution 2131 (XX) on December 21, 1965 in which this right is recognized. Thus paragraph 1 declares: "No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned."<sup>2</sup>

In view of the general though somewhat imprecise acceptance of this right of self-determination in international law, it seems unnecessary to deal with it any further. It may be enough to recall that this right may be limited by the charter of the United Nations, by bilateral treaties, or by policies and principles adopted by intergovernmental regional organizations such as the Organization of American States.

Insofar as self-determination in the first sense is concerned, the questions have frequently been raised by whom the right may be claimed and who has the duty to grant or recognize it. It has been

1. Annex to GA Res. 375 (IV), 6 Dec. 1949. UN Doc. A/1251, p. 67. See also GA Res. 2625 (XXV) "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations," adopted on Oct. 24, 1970. GAOR: Sess., Supp. no. 28 (A/8028), pp. 121, 123.

2. "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty," GA Res. 2131 (XX), Dec. 21, 1965, GAOR: 20th Sess., Supp. no. 14 (A/6014), p. 12. See also Declaration, cited above.

argued that unless a satisfactory answer can be given to these two questions it is not possible to speak of a right, properly so-called, of self-determination. This argument has merit, since usually when a right in the legal sense is created by a proper authority, the bearers of the right and the corresponding duty are ascertained or ascertainable as individuals generally or individuals or corporations belonging to a certain class or category.

The United Nations resolutions and declarations on the subject of self-determination are sometimes general and sometimes addressed to particular states. Thus colonial territories or peoples are referred to or particular governments such as Portugal are singled out. It is submitted that for the purposes of this chapter the questions of the identity of the bearer of the right and of the corresponding obligation are of no importance. The reason for this is that in any event the existence of the alleged right of self-determination in the legal sense will depend upon the authority or competence of the organs of the United Nations, particularly of the General Assembly, to create such a right or obligation. Thus if the General Assembly has no law-making competence it will be lacking this competence regardless of whether the resolution in question proclaims a right of self-determination for peoples or nations generally or for peoples or nations under colonial domination or for particular peoples like the peoples of Portugal or under Portuguese colonial rule.

Attempts are sometimes made to circumvent the question of the law-making competence of the General Assembly by arguing that the right of self-determination is included in the charter and that the relevant resolutions merely interpret the charter in an authoritative or authentic manner, that is, with a binding effect for members of the United Nations.

It is unnecessary to discuss this approach in any detail. There is an abundant literature on the subject. It may be enough to recall that there is not and never has been any consensus on the question whether the seven references to human rights in the charter are binding, singly or together, on the members. The fact that the General Assembly devoted more than 20 years to the elaboration of two Human Rights Covenants which depend for their binding force upon ratification by the members militates against the attribution of binding force to the human rights provision in the charter.

As to the right of authentic interpretation of the General Assembly there is still an unresolved controversy. No such right is conferred upon the Assembly in the charter and no such right can be derived from any relevant document such as the San Francisco Statement on the inter-

pretation of the charter.<sup>3</sup> The Advisory Opinion of the International Court of Justice in the *Expenses* case may be read as a confirmation by the court of the right of an assembly to interpret authentically and with binding force the expenditures of the organization which fall within the meaning of Article 17 (2) of the charter. Two points, however, need to be made: in the first place this right would be derived, as indeed it was derived by the court, from Article 17 (1), which confers upon the Assembly the power to "approve the budget of the Organization" and from Article 17 (2), which established the obligation of the members to bear "the expenses of the Organization . . . as apportioned by the General Assembly." In the matter of human rights there is no comparable, clear statement of legal obligation. In the second place, the Advisory Opinion of the Court has failed to resolve the conflict with respect to this matter. Members continue to resist what appears to some of them an unwarranted enlargement of the Assembly's power to interpret the charter obligations. If this is so with respect to an undoubted legal obligation, it will be all the more so when there is no solid legal anchor to which an interpretation of human rights could be attached.

The conclusion then emerges, at least provisionally, that the alleged right of self-determination cannot be derived from a simple interpretation of the charter. This aspect of the problem albeit in a somewhat different approach will be discussed in the following section.

Generally it may be said that a right which is claimed to be grounded in international law must be the product of a law-making process. The classic law-creating agencies—the formal sources of international law—are treaties and custom. Article 38 of the Statute of the International Court of Justice adds "general principles of law recognized by civilized nations." It is controversial whether these principles are those of municipal or of international law. Be that as it may, they will be left out of account here for two reasons. First, there is no space to undertake a systematic comparative study of the different systems of municipal law, and second I have a strong suspicion that the results of such an effort are not likely to be productive.

Finally, the question will be raised whether the General Assembly has a law-making competence, in particular whether its resolutions and declarations are legally binding upon the members. It may be said at once that certain resolutions of the Assembly, namely those relating to the internal functioning of the organization such as appointments, admission to membership, and others of this variety are undoubtedly legally binding providing they are in conformity with the charter itself.

3. See Leo Gross, "The United Nations and the Role of Law," *International Organization*, 19 (1965), 538f.

Political discretion does not mean that the rules of the charter can be disregarded. As Judge Bustamante said in the *Expenses* case, "The real reason for the obedience of States Members to the authorities of the Organization is the conformity of the mandates of its competent organs with the text of the Charter." He went on to say: "It cannot be maintained that the resolutions of any organ of the United Nations are not subject to review: that would amount to declaring the pointlessness of the Charter or its absolute subordination to the judgment—always fallible—of the organs."<sup>4</sup>

In order to avoid confusion between the two meanings of self-determination, I shall use "right to self-determination" in referring to the right of a people or nation to establish itself as a state,<sup>5</sup> and "right of self-determination" in referring to the right of the people of a state to choose its form of government, economic system, and so on.

The charter being a multilateral treaty may be and is the source of legal obligation for its members. "Self-determination of peoples" is referred to in Article 1 (a) of the charter of the United Nations as a "principle." It is mentioned in Article 55 which restates the purposes in more specific language. Paragraph *c* of this article refers generally to "human rights and fundamental freedoms" among the purposes which the United Nations shall promote. Self-determination is not specifically included in the list of objectives in Article 73 relating to non-self-governing territories. Development of self-government is, however, included in Article 73 (b). "Self-government or independence" is one of the basic objectives of the Trusteeship system but its implementation is made dependent, in Article 76 (b), on the terms of the trusteeship agreements.

The members which were responsible for the administration of non-self-governing territories and trust territories have largely divested themselves of their responsibilities.

From the recital of the relevant charter provisions it is *clear that nowhere has a right to self-determination* in the legal sense been established. I have no intention to disparage the potency of self-determination as a principle and a purpose of the United Nations. But no matter how potent it may be in the actual operations of the United Nations, still it is not a right in terms of the charter.

However, treaties may be interpreted and what is known as subsequent conduct of the parties is relevant in this context. Subsequent

4. International Court of Justice *Reports* 1962, pp. 151, 304.

5. This is in conformity with General Assembly Resolution 1514 (XV) and the Declaration cited above, p. 124.



conduct of the parties may also be considered as a method of amending the treaty apart from any formal procedure for amendment which may be laid down in the treaty. The formal procedure for amending the charter is the subject of chapter 18 (Articles 108 and 109), but this procedure has not been applied in connection with self-determination. To put it in another way, the principle of self-determination has not been converted into a right to self-determination by an amendment of the charter. It remains to be examined whether such a transformation has occurred as a result of subsequent conduct.

The International Law Commission included in Article 27 (3) of its Draft Articles on the Law of Treaties devoted to the "General Rule of Interpretation," the following clause: "There shall be taken into account, together with the context: (b) any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation."<sup>6</sup>

In its commentary the commission pointed out that recourse to subsequent practice as an element of interpretation is well established in the jurisprudence of international tribunals. The question obviously arises how widespread subsequent conduct must be in order to qualify as a tool of interpretation. On this point the commission was quite specific by stipulating in its 1964 draft that the practice must be one which "establishes the understanding of *all* the parties." In the 1966 final draft the word "all" was omitted but the commission stated that:

By omitting the word "all" the Commission did not intend to change the rule. It considered that the phrase "the understanding of the parties" necessarily means "the parties as a whole." It omitted the word "all" merely to avoid any possible misconception that every party must individually have engaged in the practice where it suffices that it should have accepted the practice.<sup>7</sup>

The clause quoted above was considered by the Vienna Conference on the Law of Treaties in 1968 and the Committee of the Whole recommended its adoption.<sup>8</sup> In the committee the United States proposed an amendment the object of which appears to have been to

6. Reports of the International Law Commission on the Second Part of its seventeenth session . . . and on its eighteenth session . . . GAOR: 21st Sess., Supp. no. 9 (A/6309/Rev. 1), p. 49. The text is identical with Art. 31(3b) of the 1969 Vienna Convention on the Law of Treaties except for the replacement of "understanding" by "agreement."

7. *Ibid.*, p. 53. Italics supplied.

8. Draft Report of the Committee of the Whole on its work at the first session of the Conference, Doc. A/CON. 39/G.1/L.370, p. 141.

incorporate in the text the essence of the commission's commentary. This proposal, however, was rejected.<sup>9</sup>

It is relevant to note that the Committee of the Whole modified the text of Article 4 submitted by the ILC to make it clear that the draft articles on the law of treaties do apply to treaties which are constituent instruments of an international organization "without prejudice to any relevant rules of the organization."<sup>10</sup>

As I am not aware of the existence of "any relevant rules" of the United Nations in this matter, Article 5 of the Vienna Convention may be applied to the charter of the United Nations. If this is so it would be necessary to examine whether the "principle of self-determination" has been generally understood or has been understood by all the parties to the charter as constituting a "right to self-determination." The same examination would then have to be made with respect to the human rights provisions. More specifically, it would have to be determined whether the practice established the understanding of all the parties that these provisions on human rights constitute rights and obligations in the legal sense and whether these rights and obligations have come to encompass the "right to self-determination."

It seems very doubtful, to put it no higher, whether the subsequent practice is sufficiently consistent to permit a positive conclusion along the lines indicated. There is no question that the oratory in the General Assembly and the resolutions of the Assembly are replete with affirmations of the "right to self-determination." But in testing the application of Article 31 (3b), the subsequent practice of the members, that is, the parties as distinguished from the practice of the organs of the United Nations, it is necessary to evaluate the behavior of the so-called colonial countries, along with the behavior of the parties which have advocated unconditional and speedy decolonization. The negative attitude and behavior of some of the parties would defeat any attempt to attribute to the subsequent practice the degree of universality indicated in the commentary of the International Law Commission. In the present submission subsequent practice as an element of interpretation does not support the proposition that the *principle* of self-determination is to be interpreted as a *right* to self-determination or that the human rights

9. Ibid., p. 136. The text of the proposed amendment was as follows: "Any subsequent practice in the application of the treaty which establishes the common understanding of the meaning of the terms as between the parties generally."

10. Ibid., p. 32. The commission's draft made the applicability of the articles to constituent instruments "subject to any relevant rules of the organization." Ibid., p. 26. Same text in Art. 5 of the Vienna Convention.

provisions have come to be interpreted as rights with corresponding obligations either generally or specifically with respect to the right to self-determination.

As indicated above, subsequent practice is also relevant as a process for modifying treaties. As formulated in Article 38 of the ILC's draft, it reads as follows: "A treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions."<sup>11</sup>

This article was deleted by the Committee of the Whole of the Vienna Conference.<sup>12</sup>

However, the clause proposed by the ILC has the support of at least one arbitral tribunal to which the commission refers in its commentary, namely a tribunal between France and the United States which was concerned with the interpretation of a bilateral air transport agreement. In the context of the award of 1963 the tribunal's statement was probably no more than a *dictum*. The commission refers to no other authority. For the purpose of this discussion and subject to Article 5 of the Vienna Convention, let us assume that Article 38 was declaratory of customary international law and not merely an attempt at progressive development of the law. The commission, in its commentary, pointed out that: "In formulating the rule in this way the Commission intended to indicate that the subsequent practice, even if every party might not itself have actively participated in the practice, must be such as to establish the agreement of the parties *as a whole* to the modification in question."<sup>13</sup> Applying the rule as interpreted by the commission to the question of self-determination the conclusion appears inescapable that the practice of the parties as distinguished from the practice of the organs of the United Nations has not been sufficiently consistent and not as widespread as would be necessary to support the conclusion that the principle of self-determination has been modified and is now to be regarded as a right to self-determination with a corresponding obligation on the part of the colonial or other states involved.

The relevance of the practice of the organs, that is, of the resolutions and declarations adopted by the organs of the United Nations, will be taken up below.

To sum up, the charter does not establish a right to self-determination; the principle of self-determination and the articles of human rights in the charter cannot be interpreted as having been trans-

11. *International Law Commission Report*, p. 65.

12. *Draft Report of the Committee of the Whole*, p. 165.

13. *International Law Commission Report*, p. 66.

formed into legal rights with corresponding legal obligation as a result of subsequent practice, and they cannot be construed as having been modified by subsequent practice.

The next formal source of international law to be considered is custom, or in the words of the Statute of International Court of Justice, "international custom, as evidence of a general practice accepted as law" (Article 38 [1b]). It is generally agreed that in order to constitute a rule of customary international law two elements must be shown to be present. General practice in the first place, and acceptance of this practice as law in the second place. The first element is generally characterized as objective and the second as subjective or psychological. Obviously the first is more easily ascertainable from the behavior of states than the second but in proceedings at law proof of both elements has been required.

The pronouncements on the subject by the Permanent Court of International Justice and the International Court of Justice are infrequent but remarkably consistent. The Permanent Court in the *Lotus* case (1927) had the opportunity to elaborate the distinction between mere usage and usage which is required as a matter of legal obligation. The court held first that the rules of law emanate from the will of states as expressed in treaties or "by usages generally accepted as expressing principles of law," and second that custom must have "the force of law establishing it," and third that the party invoking a rule of law must prove that the states have not merely performed certain acts or abstained from performing them, but that they did so out of a sense of legal obligation. In the *Lotus* case the question related to the exercise of criminal jurisdiction and the agent for the French government referred to a number of judgments to the effect that states have refrained from exercising jurisdiction in certain circumstances. On this point, which is relevant to the present analysis, the court said that the judgments relied upon by the French agent: "would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom."<sup>14</sup> The judgment went against the French government, France having failed to prove the existence of the sense of duty, or what is commonly called, *opinio juris*.

In a more recent case, the International Court of Justice had occasion

14. *Permanent Court of International Justice*, Series A, no. 10, p. 28.

to set forth its view on customary international law. In the *Asylum* case the court stated:

Finally, the Colombian Government has referred to a large number of particular cases in which diplomatic asylum was in fact granted and respected. But it has not shown that the alleged rule of unilateral and definitive qualification was invoked or . . . that it was, apart from conventional stipulations, exercised by the States granting asylum as *a right appertaining to them and respected by the territorial States as a duty incumbent on them and not merely for reasons of political expediency*. The facts brought to the knowledge of the Court disclose so much uncertainty and contradiction . . . and the practice has been so much influenced by *considerations of political expediency* in the various cases, that it is not possible to discern in all this any constant and uniform usage, accepted as law.<sup>15</sup>

In another context, the court made its position abundantly clear:

The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party. The Colombian Government must prove that the rule invoked by it is *in accordance with a constant and uniform usage* practiced by the States in question, and that this *usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State*. This follows from Article 38 of the Statute of the Court.<sup>16</sup>

The court adhered to this position in the *Fisheries*, *Rights of Nationals* and the *Continental Shelf* cases, in which the *Lotus* case was expressly confirmed.<sup>17</sup>

If these criteria of customary international law are applied to the right to self-determination the conclusion is inescapable that this right is not or not yet one that can be characterized as based on customary international law. True, self-determination has been granted or conceded to an impressively large number of peoples or nations but it would not be possible to supply the missing element, namely that practice was based on a sense of legal obligation. On the contrary, the practice of decolonization is a perfect illustration of a usage dictated by political expediency or necessity or sheer convenience. And moreover, it is neither constant nor uniform.

It was to be expected that the stand taken by the court on the concept of customary international law and the exacting standards of proof were subjected to a good deal of penetrating criticism. But while it is easy to

15. Reports 1950, p. 277. The court referred again to political expediency, pp. 285, 286. Italics supplied.

16. Ibid., p. 276. Italics supplied.

17. ICJ Reports 1969, pp. 3, 44.

criticize the court for supporting an excessively rigid position, it is extremely difficult to suggest a concept which, operationally, would be more satisfactory by opening the way to greater flexibility. Only one approach will be discussed here which merits serious consideration by virtue of the great authority supporting it.

The late Judge Lauterpacht while fully aware of the difficulties of proving the *opinio juris* was opposed to dispensing with it altogether on the ground that to do so would be contrary to practice. But he offered an alternative in the following:

Unless judicial activity is to result in reducing the legal significance of the most potent source of rules of international law, namely the conduct of States, it would appear that the accurate principle on the subject consists in regarding *all uniform conduct* of Governments (or, in appropriate cases, abstention therefrom) as evidencing the *opinio necessitatis juris* except when it is shown that the conduct in question was not accompanied by any such intention. The Judgment in the *Asylum* case is not inconsistent with some such approach. The solution may not be altogether satisfactory, but it is probably more acceptable than the alternative method of exacting rigid proof of the existence of international customary law in a manner which may reduce to a bare minimum its part as a source of law. Of this, the decision in the *Lotus* case . . . provides an interesting example. While it is impracticable to demand positive proof of the existence of legal conviction in relation to a particular line of conduct, it is *feasible and desirable to permit proof that in fact the opinio necessitatis juris* was absent.<sup>18</sup>

It is of secondary importance whether Lauterpacht's alternative approach is compatible with the jurisprudence of the court. What is important is to ask whether it really offers an alternative and secondly, whether this alternative would lead to a result different from that based on the jurisprudence of the court. A state which claims the existence of a rule on the ground of "uniform conduct" or "uniform abstention" of governments would be hard put to it to furnish the required evidence. In the second place, it would still have to prove that this conduct has become binding on the other state or, following Lauterpacht's alternative, that the other state was not unaware of the *opinio juris* implied in its conduct. On the other hand, that state would probably be able to show that its conduct was not accompanied by any sense of legal obligation.

It is consequently submitted that in so far as self-determination is concerned the acceptance of Lauterpacht's alternative would not lead

18. Sir Hersch Lauterpacht, *The Development of International Law by the International Court* (New York, Praeger, 1958), p. 380. Italics supplied.

to the finding that it has become a rule of customary international law in the sense of creating a right on the one side and a duty on the other. Practice there is but it falls short of "uniform conduct of Governments" and even if it did measure up to it—and there is room here for differences of opinion—it would be easy to argue the absence of the *opinio juris*.

Faced with the difficulty of accelerating the growth of customary international law in an international system subject to accelerating change and the difficulty of invoking or proving rules of that law, governments and writers have taken to argue that certain resolutions and declarations of the General Assembly have law-creating effect. In particular such effect has been claimed for the General Assembly Resolution 1514 (XV) adopted on December 14, 1960.<sup>19</sup>

Whether salvation, or escape from the confinement of the classic law-creating procedures, can be found by attributing law-making competence to the General Assembly generally or in some particular circumstances has become a matter of lively controversy. There is no room to examine this controversy in any detail nor is there any need for it, since the arguments on either side of the fence are well-known. Nonetheless it may be useful to indicate some salient points in the controversy.

At the outset it may be well to recall that the new dispensation has not yet received judicial imprimatur. The relevance of General Assembly resolutions and similar acts of other international organizations was argued extensively in the *South West Africa* cases. The International Court of Justice in its judgment in the Second Phase in 1966 limited itself to its traditional function, that is to apply the law as it finds it and not to indulge in judicial law making. In the dissenting opinions a variety of points of view was expressed ranging from a denial by Judge Jessup that the General Assembly has law-making competence to the affirmation of such competence by Judge Tanaka. The applicants argued: "that the practice of States and the views of the competent international organs are so clear, so explicit, and so unanimous in respect of the policies against discrimination, that such standards have achieved the status of an international rule of law, as a legal conclusion based upon the application of Article 38."<sup>20</sup>

Judge Jessup, while accepting the alternative proposition of the applicants, based on the same grounds, that there is "an international standard as an aid to interpretation," rejected the contention that "the

19. G.A.O.R.: 15th Sess. Supp. no. 16 (A/4684), p. 66.

20. ICJ Reports 1966, p. 431.

so-called norm of nondiscrimination had become a rule of international law through reiterated statements in resolutions of the General Assembly, of the International Labour Organization, and of other international bodies." Such a contention, he said, would be open to attack on the ground: "that since international bodies lack a true legislative character, their resolutions alone cannot create law."<sup>21</sup>

Elsewhere in his dissenting opinion Judge Jessup repeated that he did "not accept Applicants' alternative plea which would test the apartheid policy against an assumed rule of international law ('norm')," and that it was "therefore not necessary to discuss here whether unanimity is essential to the existence of *communis opinio juris*." But, said Judge Jessup:

"the accumulation of expressions of condemnation of apartheid . . . , especially as recorded in the resolutions of the General Assembly of the United Nations, are proof of the pertinent contemporary international community standard . . . This Court is bound to take account of such a consensus as providing the standard to be used in the interpretation of Article 2 of the Mandate."<sup>22</sup>

Judge Tanaka, displaying a remarkable degree of judicial boldness, expressed his views as follows:

Of course, we cannot admit that individual resolutions, declarations, judgments, decisions, etc., having binding force upon the members of the organization. What is required for customary international law is the repetition of the same practice; accordingly, in this case resolutions, declarations, etc., on the same matter in the same, or diverse, organizations must take place repeatedly.

Parallel with such repetition, each resolution, declaration, etc., being considered as the manifestation of the collective will of individual participant States, the will of the international community can certainly be formulated more quickly and more accurately as compared with the traditional method of the normative process. *This collective, cumulative and organic process of custom-generation* can be characterized as the middle way between legislation by convention and the traditional process of custom making, and can be seen to have an important role from the viewpoint of the development of international law.

In short, the accumulation of authoritative pronouncements such as resolutions, declarations, decisions, etc., concerning the interpretation of the Charter by the competent organs of the international

21. *Ibid.*, p. 432. In a note, Judge Jessup added: "The literature on this point is abundant."

22. *Ibid.*, p. 441.



community can be characterized as evidence of the international custom referred to in Article 38, par. 1 (b).<sup>23</sup>

In his dissenting opinion Judge Tanaka also said: "the method of the generation of customary international law is in the stage of transformation from being an individualistic process to being a collectivistic process."<sup>24</sup>

Judge Jessup, at the beginning of his Dissenting Opinion, quotes with approval a statement by Charles Evans Hughes, who was a member of the Permanent Court of International Justice and later Chief Justice of the United States. It was also quoted with approval by the late Judge Lauterpacht to whom he pays tribute:

A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.<sup>25</sup>

Judge Tanaka's forward-looking reasoning may well belong "to the brooding spirit of the law" but the judicial caution of Judge Jessup is more in tune with current notions about the law-generating process. Indeed if we have already reached the stage where a community-centered process has taken the place of the classic state-centered process, that is, the process of consent, then it would be difficult to understand why the General Assembly itself is still using the method of treaty law as a vehicle for creating and making binding upon the states the political, civil, economic and other human rights, the duty of non-discrimination on racial grounds, and similar matters. If Judge Tanaka's view is accepted as a correct statement of the law then there is no doubt that self-determination has become a right based on customary international law through the repeated resolutions of the General Assembly over a number of years.

However, if Judge Jessup's view is the correct one, and in the present submission it is, then the resolutions and declarations on self-determination would at best be productive of a standard of interpretation. This standard could be used in the interpretation of an appropriate treaty clause which established an obligation in the matter of self-determination, just as Judge Jessup proposed to use it in order to test the execution by South Africa of its obligation under Article 2 of the mandate. But as has been shown above, there is no such clause in the charter establishing an obligation and none could be found in customary international law.

23. *Ibid.*, p. 292. Italics supplied.

24. *Ibid.*, p. 294.

25. *Ibid.*, p. 32/15.

The International Court of Justice in the *Expenses* case attached some significance to the practice of the General Assembly in interpreting the range of Article 17 (2) of the charter and the resulting scope of the financial obligations of the members.<sup>26</sup> Judge Spender in his Separate Opinion took categorical exception to the view that subsequent practice of organs of the United Nations as evidenced in resolutions and declarations can be used in the same manner as subsequent practice of states for the purpose of interpretation. Judge Fitzmaurice shared this view in his Separate Opinion. The gist of Judge Spender's opinion is that "unless it is of a peaceful, uniform and undisputed character accepted by all current Members" practice of organs has no probative value.<sup>27</sup> The question of the proper role of the practice of organs of international organization while not new is of substantial complexity.<sup>28</sup>

In any event, subsequent practice of organs like subsequent practice of states parties to a treaty could only serve as a tool of interpretation and on condition that it is accepted by all member states. As indicated earlier, subsequent practice, whether of organs or of states, does not lead to the conclusion that the charter established a right to self-determination and a corresponding duty on the part of the member states in question.

It is now necessary to consider the question whether a single resolution such as General Assembly Resolution 1514 (XV) can be said to be legally binding on members of the United Nations, that is, the question of the law-making competence of the General Assembly. That members of the United Nations hold an affirmative view with respect to this question needs no proof. Some statements may be quoted for the purpose of illustration. Thus in the aftermath of the 1966 judgment in the *South West Africa* cases, the Soviet delegate expressed the view that the court "should have rendered a decision consistent with General Assembly resolution 1514 (XV), condemning racism and colonialism." The delegate of Iran stated that "the issue in the present case was that legislation enacted by the United Nations had not been put into effect," whereas the delegate of Pakistan, echoing Judge Tanaka, declared:

The insensitivity of these Judges to current international standards or legal norms, their disregard of the mode of generation of

26. See on this Leo Gross, "Expenses of the United Nations for Peace-Keeping Operations: The Advisory Opinion of the International Court of Justice," *International Organization*, 17 (1963), 1-35.

27. ICJ Reports 1962, p. 195.

28. For a detailed analysis see Salo Engel, "'Living' International Constitutions and the World Court (Subsequent Practice of International Organs under their Constituent Instruments)," *International and Comparative Law Quarterly*, 16 (1967), 865-910.

customary international law, their refusal to apply, in the performance of their functions in accordance with Article 38 of the Statute of the International Court of Justice, directives manifested in the resolutions of the General Assembly, are things which are bound to perturb enlightened public opinion throughout the world.<sup>29</sup>

The issue has thus been squarely raised whether the General Assembly has indeed the competence which some members believe it has.

In this connection, reference may be made to a memorandum by the office of Legal Affairs in the U.N. Secretariat on the "Use of the Terms 'Declaration' and 'recommendation' " of April 2, 1962 appended to this chapter.

Paragraph 4 of the memorandum states what I believe to be the correct view on the subject. First, a declaration or recommendation of a UN organ "cannot be made binding upon Member States," and second insofar as the "strong expectation that Members of the international community will abide by it . . . is gradually justified by State practice, a declaration may by *custom* become recognized as laying down rules binding upon States."

In a similar vein, the late Secretary-General, Dag Hammarskjöld, stated that "all international organizations have under their charters or constitutions only very limited powers of imposing legal obligations on Member States without their consent. Thus there can be no question of legislating international law in such organizations."<sup>30</sup>

There is a fairly widespread tendency to accord to resolutions of international organs some relevance in the process of creating new international law without going so far as regarding them as a means of "instant" law. My own view has been that, depending upon the subject of the resolution, the degree of preparation that was devoted to its formulation, the extent to which it is supported and accepted by the relevant members, resolutions represent a stage in the evolution of a new rule of customary international law unless the General Assembly decides to treat such resolutions merely as a step toward an international convention. The latter procedure was followed in connection with human rights, the legal principles governing the activities of states

29. G.A.O.R.: 21st Sess., Fifth Committee, 1124th mtg., October 10, 1966, pp. 23-25 (Iran). Ibid., 1414th Plenary mtg., Doc. A/PV. 1409-1431, p. 10.

30. Andrew W. Cordier and Wilder Foote, eds., *Public Papers of the Secretaries-General of the United Nations, II, Dag Hammarskjöld* (New York, Columbia University Press, 1972), 602. See also Tammes, *Decisions of International Organs as a Source of International Law*, 94 Hague Recueil des Cours, 265-363 (1958, II).

in the exploration and use of outer space, racial discrimination, and other matters. Law creation then follows the traditional pattern of seeking and receiving formal consent through ratification.

In other instances, a resolution or declaration has so far at any rate been the first and last step. This has been so in connection with General Assembly Resolution 1803 (XVIII) on Permanent Sovereignty over Natural Resources of December 14, 1962, and the Resolution 1514 (XV) which is here relevant, the "Declaration on the granting of Independence to colonial countries and peoples," of December 14, 1960. Resolution 1803 (XVII) may have a very potent impact indeed on the *quantum* of compensation to be paid in case of nationalization of alien property. The old formula "prompt, adequate and effective" has been under attack at least since 1930 and the new formula "appropriate compensation" may well be on the road to becoming part of the customary international law. But it is well to bear in mind that *opinio juris* without practice can no more produce a rule of law than practice without *opinio juris*.<sup>31</sup>

In terms of Article 38 (1d) of the statute of the International Court of Justice such resolutions may serve "as a subsidiary means for the determination of rules of law." I suggested that they may rank with, or even ahead of, "the teachings of the most highly qualified publicists" but below judicial decisions.<sup>32</sup>

A somewhat similar intermediate position has been expressed as follows:

Without having the character of a treaty, with all its constitutional implications, resolutions of this kind unquestionably are an important link in the continuing process of development and formulation of new principles of international law. In some cases they will be preparatory to formal international covenants; in other cases they will serve as highly authoritative statements of international law in certain fields.<sup>33</sup>

I cannot fully subscribe to the last part of the statement though it would be possible to apply it in fields such as cooperation in outer space, where there is little or no settled law at all.

31. On this see Leo Gross, "The United Nations and the Role of Law," pp. 555-558.

32. *Ibid.*, p. 557.

33. Wolfgang Friedmann, *The Changing Structure of International Law* (New York, Columbia University Press, 1964), p. 139. See also S. K. Bailey, "Making International Law in the United Nations," *Proceedings, American Society of International Law, 61st Annual Meeting (1967)*, p. 239.

Relevant in this context is the international cooperative effort to produce an impartial and objective textbook on international law, edited by Max Sørensen. According to this, resolutions and declarations of the General Assembly are not in themselves acts creative of new rules of international law because the General Assembly has no legislative power. On the other hand, a unanimous or nearly unanimous resolution may contribute to the formation of customary international law or be evidence of such a rule.<sup>34</sup> In this textbook it is also suggested that some resolutions may manifest a recognition of certain legal principles by members voting for them, a possibility which certainly cannot be excluded in some areas such as outer space but it would be a matter of proving that the vote was indeed intended to express acceptance of legal principles by the members concerned.

Finally, this textbook suggests that resolutions may be interpretations of rules or principles in the charter and which are themselves binding. This view has already been discussed. The General Assembly has no power of authentic, that is, binding interpretation. In the area of self-determination there are no binding rules or principles in the charter.

It may be worthwhile to include in this survey the views on self-determination of a distinguished Polish jurist, Manfred Lachs, who has been elected a member of the International Court of Justice. He agrees with the position I have taken that "the relevant provisions of the Charter were not creative of a new rule of international law. All they did was to confirm and lay down a principle which had long been growing and maturing in International Society."<sup>35</sup> But the issue of self-determination has become a permanent item on the Agenda of the United Nations. Resolution 1514 (XV) should "be viewed as interpreting the principles of 'self-determination' enunciated in Chapter I" of the charter. Lachs concludes that "under the circumstances, there seems no doubt that the interpretation given by the General Assembly is authoritative and binding."<sup>36</sup>

34. M. Virally, "The Sources of International Law" in Max Sørensen, ed., *Manual of Public International Law* (New York, St. Martin's Press, 1968), p. 162.

35. "The Law In and Of the United Nations," *Indian Journal of International Law*, 1 (1961), 432. Along similar lines the following statement is relevant! "Thus it might seem that it is only within the last generation that it has come to be admitted that there is a principle of self-determination of peoples which must underline all international law. Yet, as the foregoing analysis of the process of changes in territorial sovereignty and of state succession must sufficiently demonstrate, that principle has always underlain the system of international law." Clive Parry, "The Function of Law in the International Community," in Max Sørensen, ed., *Manual of Public International Law*, p. 19.

36. *Ibid.*, pp. 438, 439.

Writing three years later, Lachs seems to have modified his views or perhaps given them a somewhat more precise formulation. The 1960 Declaration on the ending of colonialism like the 1948 Declaration on Human Rights are from the formal point of view only resolutions but they set in motion a process the political and legal effects of which go far. One cannot but agree with this proposition. Lachs goes on to say that these and other resolutions "lay solid foundations for obligatory norms, which, in general, constitute the work of those organizations. For this reason they have undoubtedly a part in the formulation of international law."<sup>37</sup>

I shall make no attempt to weigh the opinions on one side or the other of the argument. The weight of the reasoned argument as distinguished from sheer oratory may well be on the side of those who accord to resolutions of the General Assembly a role in the formation of law. From a legal standpoint all I can say is that I regard this view as a better one and as being more in accord with the prevailing system of international law and the character of the statal environment in which it functions. Both the environment and the system are far from satisfactory but we have to live in and with it.

Before leaving this part of my analysis, two or three factors relating to self-determination may be mentioned briefly. The first factor is that the General Assembly has recently characterized and condemned as "crimes against humanity" certain activities in the context of a denial of the right to self-determination. Thus in Resolution 2184 (XXI) of December 12, 1966, the Assembly "*condemns* as a crime against humanity, the policy of the Government of Portugal, which violates the economic and political rights of the indigenous population by the Settlement of foreign immigrants in the Territories and by the exporting of African workers to South Africa."<sup>38</sup>

The General Assembly has also condemned "the policies of apartheid practiced by the Government of South Africa as a crime against humanity."<sup>39</sup> Could denial of the right to self-determination be characterized as a crime against humanity at some future time?<sup>40</sup>

37. "Le Role des organizations internationales dans la formation du droit international," in *Mélanges offerts à Henri Rolin* (1964), p. 166. My translation.

38. G.A.O.R. 21st Sess., Supp. no. 16 (A/6316), p. 70.

39. G.A. Resolution 2202 (XXI) of October 16, 1966, *ibid.*, p. 20. Both resolutions were recalled in Res. 2144 (XXI) of October 26, 1966, *ibid.*, p. 47.

40. This has indeed been done indirectly by Resolution 2621 (XXV) of October 12, 1970, in which the Assembly declared, "The further continuation of colonialism in all its forms and manifestations a crime which constitutes a violation of the Charter of the United Nations, the Declaration on the Granting of

The second factor is the increasingly strident appeal to assist in the struggle for independence. Thus in the Resolution 2184 (XXI) referred to above, the Assembly "*appeals* to all States to give the peoples of the Territories under Portuguese domination the moral and material support necessary for the restoration of their inalienable rights." If this is not a call to what in other contexts is called "wars of national liberation" it comes close enough to it. It will be noted that the appeal is addressed to "all States" which, conveniently, includes The People's Republic of China.<sup>41</sup>

It is interesting that in the objective and impartial *Manual* Professor K. Skubiszewski considers that Article 2 (4) of the charter does not apply in the relations between a state and its people, that the right of the people to fight the government is deduced "from the principle of self-determination and the political right of revolution," and that the conflict while "formally domestic" in nature is nonetheless a "conflict between armed forces which represent different authorities and different peoples. Fighting by the local people for the independence of their country that is part of the colonial empire of an extraneous power, sometimes referred to as a war of liberation, is lawful."<sup>42</sup> If such fighting is lawful on one side, can it be lawful on the other side as well? Is military or other assistance to the "local people" also lawful?<sup>43</sup>

Independence to Colonial Countries and Peoples and the principles of international law." G.A.O.R.: 25th Sess., Supp. no. 28 (A/8028), p. 2.

41. See par. 2 of the above resolution, and Resolution 2627 (XXV) of October 24, 1970, *ibid.*, p. 4, Resolution 2708 (XXV) of December 14, 1970, *ibid.*, p. 7, and Resolution 2625 (XXV) of October 24, 1970, *ibid.*, p. 124.

42. "Use of Force by States, Collective Security, Law of War and Neutrality," in Max Sørensen, ed., *Manual of Public International Law*, p. 771. The "inalienable right of all colonial peoples to self-determination" and the "legitimacy" of their struggle for freedom "by all appropriate means" or "by all the necessary means" at their disposal has been reaffirmed or recognized in Resolutions 2627 (XXV) of October 24, 1970, and 2708 (XXV) of December 14, 1970, *ibid.* See also Res. 2734 (XXV) of December 16, 1970, *ibid.*, p. 23, par. 18, and Res. 2649 (XXV) of November 30, 1970, *ibid.*, p. 74, par. 2.

43. In this connection Resolution 3103 (XXVIII) of December 12, 1973 entitled "Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes" is relevant. The resolution confirms that colonialism is a crime (see Res. 2621 [XXV], n. 38a above) and that struggle for self-determination is legitimate, and declares that any attempt to suppress this struggle is contrary to the Charter and various resolutions and "constitutes a threat to international peace and security," that armed conflicts involving such a struggle are to be regarded as "international armed conflicts," and that the Geneva Conventions of 1949 should apply to the combatants carrying on this struggle. In Resolution 3163 (XXVIII) of December 14, 1973, the Assembly urges in par. 7 "all States and the specialized agencies . . . to provide

The third factor is the increasing tendency to enlist the plenary powers of the Security Council for the purpose of achieving the policy objectives formulated in the resolutions of the General Assembly. Suppose that the Council would resort to enforcement action in order to assist a people to achieve self-determination, would such action transform the principle into a right to self-determination? If such action were to be construed as a sanction in the legal sense then—to use Kelsen's terminology—the denial of self-determination would be a delict, that is, an infringement of a people's legal right to self-determination.

The standpoint from which the position of the right of self-determination has been considered so far may be identified as positivistic. It might be of interest to study the problem of self-determination from the point of view of the policy-oriented methodology. Characterized by the employment "of certain processes of thought—a frame of reference, a method of inquiry, a disciplined and contextual mode of analysis,"<sup>44</sup> it prefers to regard international law as part of the world power process,<sup>45</sup> as a result of which the law is drained of its normative character and content. The role of law in the process of power is broken down into seven functional phases of decision making, namely prescription, recommendation, intelligence, invocation, application, appraisal, and termination.<sup>46</sup> Each of these is broken down into a number of tasks. The reader may wish to consider the desirability of applying this multiphased approach to the problem of self-determination. The overriding goal of this policy-oriented approach is an international law of human dignity which is bound to reflect subjective value preferences and judgments.

Self-determination has a place in this mode of thinking as a goal but it is one of several goals:

While according great deference to the principle of self-determination, such international law might, further, balance self-determination with capacity for, and acceptance of, responsibility and seek an organization of government in territorial units large enough to discharge responsibility. Contemporary techniques in community plan-

moral and material assistance to all peoples struggling for their freedom and independence in the colonial territories . . . in particular to the national liberation movements of the territories in Africa—in consultation, as appropriate, with the Organization of African Unity."

44. Myres S. McDougal and Associates, *Studies in World Public Order* (New Haven, Yale University Press, 1960), p. 990.

45. *Ibid.*, p. 12.

46. *Ibid.*, p. 14.



ning might be employed to encourage the establishment of appropriately balanced, economic regional communities. The goal of a law of freedom is not the extreme of anarchy but an ordered, productive, shared liberty and responsibility.<sup>47</sup>

From an impressionistic point of view it would seem that the deference thus accorded to self-determination falls short of the principles embodied in Resolution 1514 (XV). That resolution calls for transfer of "all powers to the peoples . . . without any conditions or reservations" and declares specifically that there must be no "balancing"—"Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence." Regional communities might be incompatible with respect for "the integrity of their national territory," that is, the territory of the dependent peoples. To the extent that this approach is policy-oriented the outcome of analysis may depend upon which country's policy is chosen implicitly or explicitly as the overarching goal.

The foregoing analysis suggests the conclusion that the "principle" of self-determination in Article 1(2) of the charter has not been transformed into a right to self-determination and that, independently of the charter, no such right has become part of customary international law, for the following reasons:

1. The General Assembly has no competence to interpret charter principles with binding force for all or some members;
2. The "principle" of self-determination has not been transformed into a "right" to self-determination by the subsequent practice of the parties as a means of interpretation of treaties or as a means of modifying treaty provisions;
3. The General Assembly has no law-making competence, neither generally nor with specific reference to self-determination;
4. The practice of organs of the United Nations has not become a new method or source of generating rules of customary international law;
5. Resolutions or declarations of the General Assembly may be a step in the formation of customary international law through practice accepted as law.

In my view, the potency of the principle of self-determination depends less upon its characterization as right to self-determination, that is, as a norm of contemporary international law—regardless of the persuasiveness of any particular line of legal reasoning which would permit such a characterization—than upon the effectiveness of the political pressure that can be mobilized in and out of the United Nations in order to make it prevail. For even norms of international law if not complied voluntarily must as a last resort be enforced.

47. *Ibid.*, p. 1010.

**ANNEX 105**

Prakash Sinha, 'Is Self-Determination Passe?' (1973) 12 *Columbia Journal of Transnational Law* 260

# Is Self-Determination Passé?

S. PRAKASH SINHA\*

The Catholics of Northern Ireland, the Pathans of Pakistan, the non-white populations of South Africa and Rhodesia, the French-speaking people of Canada, the Nagas of India, the Kurds of Iraq, the Baltic peoples of the Soviet Union, and the Negroes of the United States are some of the peoples today to whom the concept of self-determination has particular significance. However, the proposition might be raised that the very principle of self-determination has already reached the limits of its applicability.

Since World War II, self-determination has resulted primarily from (1) the reconstitution of independence for states which had existed at the beginning of that war, and (2) the decolonization of those territories which were known to be of the colonial type at the time of the adoption of the Charter of the United Nations in 1945. The former occurred pursuant to Article 3 of the Atlantic Charter partially even before the U.N. Charter came into effect, as for example with regard to Austria, Czechoslovakia, and Yugoslavia. The latter resulted from negotiations between the colony and the imperial power, revolution by the colony, or action of the United Nations. The role of the United Nations in decolonization has ranged from being merely declaratory, as in the case of Algeria, to being in some manner constitutive, as in the case of Indonesia. Moreover, the United Nations has succeeded in marshalling considerable moral force in support of decolonization, which has now been almost universally achieved, with the notable exceptions of certain Portuguese colonies and territories of South Africa. The question now arises whether these achievements have exhausted the principle of self-determination.<sup>1</sup>

A perspective is gained for appreciation of the question when one observes the growth, development, and movement of the idea, first expressed in the writings of Marsilius of Padua in the early fourteenth century, that the legitimacy of the dominion is based upon the consent

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1. The question posed here is, of course, not the only issue with respect to self-determination. The American Society of International Law has established a panel on self-determination and one of the panelists, admittedly borrowing somewhat from the discussions of the panel, has recently published a different set of thoughts on the general topic. See Emerson, *Self-determination*, 65 AM. J. INT'L L. 459 (1971). Perhaps it should be explained here that the present writer is *not* a member of the panel.

of the governed.<sup>2</sup> Following the Reformation, the Puritan doctrine of the state applied the Calvinist and Anglo-Puritan concepts of individual freedom of religious self-determination to the political community,<sup>3</sup> and certain European philosophers of the eighteenth century explicated a principle of the free nature of man in his relation to politics, arguing that the state must be constituted on the basis of this principle.<sup>4</sup>

Until the end of the eighteenth century, the principle of self-determination was applied primarily to domestic politics. Thus, for example, in 1526 a legal counselor of Francis I of France denounced the cession of Burgundy to Emperor Charles V without having obtained the consent of the estates of the province of Burgundy. Henry II of France obtained declarations in 1552 from the local authorities of the cities of Metz, Toul, and Verdun accepting the French supremacy, after taking over these cities. England replaced monarchical absolutism in the seventeenth century with parliamentary democracy. The first independent national authority of the people was established at the end of the eighty-years' war between the Protestant Netherlands and Catholic Spain. Democratic principles were asserted in state-making by the American (1775) and French (1789) revolutions.<sup>5</sup>

The goal of the principle was the achievement of a free constitutional order and, until the middle of the eighteenth century, it meant people's representation in the government, political action by the people to check the government, and administration by the government in the interest of the people. But the French revolution underscored the concept that it was for the people to do even their own state-making, as sovereign<sup>6</sup> and not as subjects.<sup>6</sup> Similarly, the Irish Denunciation Act of 1783 reaffirmed "no legislation without representation" for Ireland;<sup>7</sup> the plebiscites of 1790 confirmed the French sovereignty over Venaissin

2. MARSILIO DEI MAINARDINI, *DEFENSOR PACIS* (1324); 2 A. GEWIRTH, *MARSILIUS OF PADUA: THE DEFENDER OF PEACE* (1956).

3. Raschhofer, *Das Selbstbestimmungsrecht in Westlicher Sicht*, [1962] *INTERNATIONALES RECHT UND DIPLOMATIE* 13 [hereinafter cited as Raschhofer].

4. Thus, for example, Schiller wrote in a letter to Korner in 1793 that the content of Kant's philosophy could be summarized in the phrase: "Bestimme dich aus dir selbst" [Determine thyself from within thyself]. Quoted in Raschhofer, *supra* note 3, at 13.

5. G. DECKER, *DAS SELBSTBESTIMMUNGSRECHT DER NATIONEN* 74 (1955) [hereinafter cited as DECKER]; K. RABL, *DAS SELBSTSTIMMUNGSRECHT DER VOLKER* 32 (1963) [hereinafter cited as Rabl].

6. The French Revolution moved democracy from mere representation of the people by individuals exercising constitutional control over the government to making the people the state's supreme authority. People "passed from the role of subject to that of sovereign". A. COBBAN, *NATIONAL SELF-DETERMINATION* 5 (1945).

7. The Irish Denunciation Act of 1783, 22 Geo. 3, c.53 (1783).

and Avignon, acquired earlier by written international undertakings;<sup>8</sup> and the Peace Treaty of Kitchuk-Kainardji (1774) authorized Russia to interfere with Turkey's internal order for the protection of the Christian religious and ethnic communities in Turkey.<sup>9</sup> States which failed to persuade their people to consider themselves as a nation-state tended to disintegrate, as seems to have been the case with the Austrian and Turkish empires.

In the nineteenth century one discovers a strong appearance of the nationality principle under which ethnic factors determined a nation, and a nation thus conceived defined a people as a conscious unit of its national culture. This principle called for the achievement of the nation-state, thereby demanding identity between the political structure of a people and its ethnic common denominator, even at the expense of the rights of the sovereign or in violation of the international arrangements under treaties. Such, for example, was the thesis propounded by the Italian Jurist P. C. Mancini in 1851.<sup>10</sup> A variation of it is found in the Austrian socialist doctrine, primarily formulated by Karl Renner (1902), which claims that socialism realizes the demands of national autonomy, including the unrestricted self-determination of a people in the domestic sphere on the basis of its possession of majority and self-dependence, and a restricted measure of self-determination in the international sphere on the basis of cosubordination to the comity of nations.<sup>11</sup>

The ethnic nationality principle attacked the doctrine that multiple nationalities could coexist within one state. Pursuant to the co-existence theory, attempts were made to resolve ethnic disputes through adjusting the state's constitutional structure so as to secure the rights of various nationalities within it as, for example, by incorporating nationality protection clauses in the German and Austrian constitutional charters.<sup>12</sup> But the racial antagonism generated by the nationality

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8. Woolsey, *Self-determination*, 13 AM. J. INT'L L. 302 (1919) [hereinafter cited as Woolsey].

9. RABL, *supra* note 5, at 35.

10. R. LAUN, *DER WANDEL DER IDEEN STAAT UND VOLK ALS AUSSERUNG DES WELTGEWISSENS* 183 (1933); H. RASCHHOFER, *DER POLITISCHE VOLKSBEGRIFF IM MODERNEN ITALIEN* (1936); Kohn, *The United Nations and National Self-Determination*, 20 REV. POL. 526, at 527.

11. K. RENNER, *DAS SELBSTBESTIMMUNGSRECHT DER NATIONEN IN BESONDERER ANWENDUNG AUF OSTERREICH* (1918) appeared as the second revised edition of his *DER KAMPF DER OSTERREICHISCHEN NATIONEN UM DEN STAAT* (1902), which was published under the pseudonym Rudolf Springer. For an exploration of Renner's theory of self-determination, see H. RASCHHOFER, *DAS SELBSTBESTIMMUNGSRECHT IN DER THEORIE RENNERS* (1961).

12. RABL, *supra* note 5, at 45.

principle led to both international military action and mass expulsion. Thus, the Hungarian leader Kossuth demanded the expulsion of the Transylvanian Saxons in 1849; the Czech leader Palacký refused the "self-sacrifice" of the Czechs when he declined to join the Frankfurt Assembly of the German Reich on their behalf; Italy's Giuseppe Mazzini conceived of Italian Irredentism in 1866, which sought Italy's ethnic uniformity even if this meant cultural and linguistic "denationalization" of foreign populations; the Proclamation of the First International in 1865 on the Polish Question followed the Irredentism's lines; and similar demands were made by the Slavs, the Greeks, the Rumanians, the Magyars of East-Central and Southeast Europe, and by the Germans on both sides of the frontiers of 1871.<sup>13</sup>

A bitter struggle emerged for correcting the existing political structures and boundaries to correspond to patterns of ethnic settlement. Frightened minorities took to mass exodus from their ancestral homes as, for example, during the Balkan Wars of 1912-1913. As a result of the movement generated by the nationality principle, Italy gained her unity between 1859 and 1871;<sup>14</sup> parts of Savoy and Nice were ceded to France subject to plebiscite by the Treaty of Turin of 1860;<sup>15</sup> the British relinquished the Greek-inhabited Ionian Islands in 1862;<sup>16</sup> the decentralization of the British Empire commenced with the British North America Act of 1867;<sup>17</sup> plebiscite was made a condition subsequent in the case of North Schleswig in 1864, although never fulfilled; Sweden ceded the Isle of Saint-Barthelèmy in 1877 under the express condition of the consent of its population; and Chile and Peru adopted similar ideas in a treaty of 1883.<sup>18</sup>

In the twentieth century, both sides in World War I (1914-1918) used an appeal to self-determination in order to encourage discontented minorities on either side, and by 1917 self-determination had become a catchword of international politics. The 1917 Proclamation of Rights

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13. G. PALACKÝ, *GEDENKBLÄTTER-EINE AUSWAHL VON DENKSCHRIFTEN, AUFSÄTZEN UND BRIEFEN* 149 (1874); Haines, *Italian Irredentism During the Near Eastern Crises, 1875-1878*, 9 J. MOD. HIST. 23 (1937). The Proclamation on the Polish Question was made by the First International on September 27, 1865. It said: "Es ist dringend erforderlich, den wachsenden Einfluss Russlands in Europa zu vernichten, indem für Polen das Selbstbestimmungsrecht gesichert wird, das jeder Nation gehört, und dadurch, dass diesem Land wieder eine soziale und demokratische Grundlage gegeben wird." See DECKER, *supra* note 5, at 153; 1 F. CARR, *THE BOLSHEVIK REVOLUTION, 1917-1923*, at 416 (1950).

14. RABL, *supra* note 5, at 46.

15. Woolsey, *supra* note 8, at 302.

16. RABL, *supra* note 5, at c.II.

17. The British North America Act of 1867, 30 & 31 Vict., c.3 (1867).

18. Woolsey, *supra* note 8, at 302.

of the Peoples of Russia adopted it, the Soviet Declaration of 1918 pronounced it, and the Soviet Constitution of 1963 safeguarded the right of every republic of the Union to free withdrawal from the Union.<sup>19</sup> President Wilson of the United States advocated self-determination as an imperative principle of action and as an official Allied policy, incorporating it in his famous Fourteen Points and Four Principles.<sup>20</sup> France used it in the Peace Conference.<sup>21</sup> The German Reich accepted it in an exchange of notes with the United States in 1918.<sup>22</sup> It was recognized by Article 2 of the Weimer Constitution.<sup>23</sup> It became a general guiding principle during the era of the League of Nations. It was proclaimed by the Atlantic Charter of 1941 as a goal of the Anglo-American policy during World War II.<sup>24</sup> It was confirmed in the 1942 Declaration by the United Nations<sup>25</sup> and further proclaimed in the Yalta (1945) Dec-

19. MINISTERSTVO INOSTRANYKH DEL SSR, 1 DOCUMENTY VNESHNEI POLITIKI SSSR [Ministry of Information of the U.S.S.R., 1 Documents on Foreign Policy of the U.S.S.R.] 14-15 (1957); Decree of Nov. 8, 1917, Soviet Decree of Peace, *id.* at 11-14, 69; GAIDUKOV-KOTOK-RONIN, ISTORIJA SOVETSKOI KONSTITUSII [History of the Soviet Constitution] 9 (1957); KILBANSKI, DIE GESETZGEBUNG DER BOLSCHEWIKI 1-13 (1920).

20. In a message to Congress on 11 February 1918, President Wilson said that "[t]he right of nations to free self-determination is no mere phrase, it is an imperative principle of action, which will be disregarded by statesmen in the future only at their own risk." He said in a speech in Baltimore on 6 April 1918 that "[t]he right of nations to free self-determination is a principle on which the whole of the modern world is based." In a speech at Mount Vernon, on 4 July 1918, he argued for the "settlement of any question, whether it be a matter of territory, sovereignty, of economic arrangements or political relations, to be effected on the basis of free acceptance by the people directly affected." See OFFICIAL STATEMENTS OF WAR AIMS AND PEACE PROPOSALS, DECEMBER 1916 TO NOVEMBER 1918, at 268 (J.B. Scott ed. 1921); J. WHEELER-BENNETT, THE FORGOTTEN PEACE: BREST-LITOVSK 364 (1939); G. KENNAN, SOVIET-AMERICAN RELATIONS, 1917-1920; RUSSIA LEAVES THE WAR 244 *passim*; A. LUCKAU, THE GERMAN DELEGATION AT THE PARIS PEACE CONFERENCE 123-24 (1941).

21. Raschhofer, *supra* note 3, at 16-17.

22. Raschhofer, *supra* note 3, at 17. The Foreign Minister of the German Reich, von Brockdorff-Rantzau, declared in his inaugural speech on 2 January 1919 that self-determination was "a fundamental right of nations."

23. It must, however, be noted that the Protocol of 23 September 1919 abrogated Article 61, which was based on Article 2, Raschhofer, *supra* note 3, at 17.

24. In the Atlantic Charter, signed on 14 August 1941, President Roosevelt and Prime Minister Churchill declared that they "deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future of the world. First, their countries seek no aggrandizement, territorial or other; second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned; third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them." A DECADE OF AMERICAN FOREIGN POLICY, BASIC DOCUMENTS, 1941-49, at 1 (1950).

25. The Declaration was a response to the Tripartite Pact signed at Berlin

laration on Liberated Europe.<sup>26</sup> When the Charter of the United Nations was adopted, self-determination had come to be accepted as an established principle of political organization.

Much movement has occurred under the rubric of self-determination during the period reviewed above. It must, however, be pointed out that states have used the principle more as a tool of political convenience than as a prime mover of an international act, more as a device to improve or secure the posture of the actor than as a *raison d'être* for the posture taken. The application of the principle to a particular situation has almost always been secondary to other factors active in the crisis, rather than the primary activating force for the resolution of that crisis. Thus, the French revolution used plebiscites as a post-factual justification for their armed victory in Avignon, Savoy, Belgium, and Geneva.<sup>27</sup> And although plebiscites were used for the reunion of Avignon and the Venaissin in 1790, for the cession of part of Savoy and Nice to France in 1860, for the cession of the Isle of Saint Barthelèmy to France in 1877, and for the emancipation of Italy, they were not adopted by the United Kingdom and the United States, became only a condition subsequent in the case of North Schleswig in 1864, which condition was never fulfilled, and were not applied to the cession of the Virgin Islands by Denmark to the United States in 1917

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on September 27, 1940 by Germany, Italy, and Japan, in which they "decided to stand by and co-operate with one another in regard to their efforts in Greater-East Asia and the regions of Europe respectively wherein it is their prime purpose to establish and maintain a new order of things calculated to promote the mutual prosperity and welfare of the peoples concerned." 204 L.N.T.S. 386. The joint declaration was made by the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, the Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxemburg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa, and Yugoslavia. Mexico adhered to the Declaration on June 5, and the Commonwealth of the Philippines on June 10, 1942. Other countries adhered to it subsequently.

26. The Declaration on Liberated Europe reads: "To foster the conditions in which the liberated peoples may exercise these rights," the Premier of the Union of Soviet Socialist Republics (Molotov), the Prime Minister of the United Kingdom (Eden), and the Secretary of State of the United States of America (Stettinius) agree that the three governments "will jointly assist the people in any European liberated state or former Axis satellite state in Europe where in their judgment conditions require . . . (c) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of governments responsive to the will of the peoples; and, (d) to facilitate where necessary for holding such elections." Declaration on Liberated Europe, The Crimea (Yalta) Conference 4-11 February 1945, 12 DEP'T STATE BULL., No. 295, 213, 215 (February 18, 1945); A DECADE OF AMERICAN FOREIGN POLICY, BASIC DOCUMENTS, 1941-49, at 27, 29 (1950).

27. K. LOEWENSTEIN, POLITICAL RECONSTRUCTION 16-17 (1946).



or to the Louisiana Purchase.<sup>28</sup> The Americans fought a bitter war to keep the southern states in the Union against their will, and the French Convention of 1792 imposed the death penalty for any attempt to disrupt the Unity of the French Republic.<sup>29</sup>

Wherever national revolts succeeded in setting up national governments in nineteenth-century Europe, it was due to the backing of strong military power and not to a principle of self-determination. In the absence of military power independence was not achieved, as in the case of the Poles. During World War I, the British Memorandum on Territorial Settlement itself denied the application of the principle of self-determination to any state which was likely to endanger the European peace in the future. Moreover, the British Government's pledges to its allies, especially to Italy, were to prevail over the principle.<sup>30</sup> The Russians essentially refuted the principle when they published the secret inter-Allied understandings as to the war aims of the Entente in 1917.<sup>31</sup> The British Prime Minister and the U.S. President vocalized self-determination partly to dim the glamor of the Bolshevik slogans,<sup>32</sup> and that which was to be an imperative principle of action in the Allied policy, was not to apply to Austria-Hungary, the new Poland, Trieste and Trentino, Alsace and Lorraine, the German colonies, and the new states carved out of Austria.<sup>33</sup> Nor was the principle used as

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28. As an American writer states, "[w]hen the river traffic of our trans-Allegheny country was its only commercial outlet, New Orleans was in foreign hands. The right of free trans-shipment was granted by the treaty with Spain in 1795. Then came the Louisiana Purchase, a chief motive for it being the desire to possess the lower Mississippi, for the free-port privilege did not satisfy the West. Now suppose the self-determination principle to have been applied to New Orleans in limitation of the Louisiana Purchase, whereby the Spanish and the French population by its vote could prevent the cession of the port and the lower river. Could the whole of our people consent to have its development, its dignity, its continuity so limited? Clearly, the little principle must yield to the big interest." Woolsey, *supra* note 8, at 304.

29. See A. COBBAN, NATIONAL SELF-DETERMINATION 77 (1945); R. LANSING, THE PEACE NEGOTIATIONS: A PERSONAL NARRATIVE 97-98, 100-03 (1921).

30. G. DICKINSON, DOCUMENTS AND STATEMENTS RELATING TO PEACE PROPOSALS AND WAR-AIMS xiv (1919) [hereinafter cited as DICKINSON]. See also D. GEORGE, THE TRUTH ABOUT THE PEACE TREATIES 31 (1938) [hereinafter cited as GEORGE].

31. DICKINSON, *supra* note 30, at xiv; GEORGE, *supra* note 30, at 31.

32. A. MAYER, WILSON VS. LENIN: POLITICAL ORIGINS OF THE NEW DIPLOMACY, 1917-1918 (1964).

33. 3 THE INTIMATE PAPERS OF COLONEL HOUSE 346 (C. Seymour ed. 1926-28); Woolsey, *supra* note 8, at 303. "Surely this [Wilson's thirteenth point as to Poland] did not mean that little enclaves of the German race could be excluded from Polish allegiance. Access to the sea is essential to the commercial independence, even to the political integrity of such a state as the new Poland. Now granting that the Danzig Port and corridor furnish the only satisfactory 'free and secure access to the sea', such as the President speaks of, and granting that its population is overwhelmingly German, how far is the principle of self-determination to bar its

the basis for the decisions of the Allied Powers on such central European problems as Austria and Sudetenland.<sup>34</sup> The Peace Conference at Versailles did not create new states on the basis of self-determination, but simply took note of the accomplished facts that the nationalities themselves had gathered armies and set up governments. Compromises were made in view of factors other than self-determination. One such compromise was a mandates system for the former German colonies and the Middle Eastern territories detached from Turkey. The latter territories were eventually to become independent under Article 22(4) of the Covenant of the League of Nations, but even that was not to apply to the mandated territories in Africa and Oceania.<sup>35</sup> However, generally speaking, self-determination seems to have been accepted as a principle of political organization at the time the Charter of the United Nations was adopted after World War II.

Both the concept of self-determination and its forms have achieved a high degree of development in the practice of the United Nations. Articles 1 (paragraph 2) and 55 speak of self-determination of peoples, and Chapters XI (Declaration Regarding Non-Self-Governing Territories) and XII (International Trusteeship System) specify certain of its forms. Although there is a controversy with respect to the significance of these provisions in international law,<sup>36</sup> certain organs of the

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cession, as against the 'material interest or advantage' of Poland itself? A similar problem must be faced in the case of Fiume, which is Italian in population, but claimed to be essential to the economic independence and future growth of the new state of Jugo-Slavia. There is an added complication here in [the nature of a] war promise to Italy."

34. Raschhofer, *supra* note 3, at 17.

35. O. J. LISSITZYN, *INTERNATIONAL LAW TODAY AND TOMORROW* 44 (1965); Wright, *Recognition and Self-determination*, 48 *PROC. AM. SOC. INT'L L.* 23, 27 (1954) [hereinafter cited as Wright].

36. For different viewpoints, see C. ROUSSEAU, *DROIT INTERNATIONAL PUBLIC* 81 (1953); G. STARUSHENKO, *THE PRINCIPLE OF NATIONAL SELF-DETERMINATION IN SOVIET FOREIGN POLICY* 162 (1963); Lyubomudrova, *The Self-determination of Nations as one of the Basic Conditions for International Cooperation and Peaceful Co-existence*, in *SYMPOSIUM, THE INTERNATIONAL LAW FORMS OF THE PEACEFUL COEXISTENCE OF STATES AND NATIONS* (1957); I. V. SPERANSKAYA, *THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW* (1961); H. KELSEN, *THE LAW OF THE UNITED NATIONS* 51-53 (2d ed. 1951); R. BRUNET, *LA GARANTIE INTERNATIONALE DES DROITS DE L'HOMME D'APRÈS LA CHARTE DE SAN FRANCISCO* 164 (1947); P. N. DROST, *HUMAN RIGHTS AS LEGAL RIGHTS* 28-31 (1951); N. BENTWICH & A. MARTIN, *A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS* 7 (1950); C. FENWICK, *INTERNATIONAL LAW* 178 (3rd ed. 1952); Raschhofer, *supra* note 3; Scelle, *Quelques réflexions sur le Droit de peuples à disposer d'eux-mêmes*, in *GRUNDPROBLEME DES INTERNATIONALEN RECHTS, FESTSCHRIFT FÜR JEAN SPIROPOULOS* 385 (1957); Kraus, *Das Selbstbestimmungsrecht der Völker*, in *ARBEITSKREIS, DAS ÖSTLICHE DEUTSCHLAND, EINE HANDBUCH* 57, 81 (1959); Wright, *supra* note 35, at 23, 27; Magarešević, *A View on the Right of Self-determination in International Law*, 3 *JUGOSLOVENSKA REVJA ZA MEDUNARODNO PRAVO* 30 (1958); Bartos, in *INSTITUTE OF INTERNATIONAL POLICIES*

United Nations, most prominently the General Assembly, have both developed the norm and amplified its forms based upon the Charter.<sup>37</sup> The General Assembly has formulated factors which should be taken into account in deciding whether a territory is or is not a territory whose people have obtained a full measure of self-government.<sup>38</sup> These factors are divided into three parts: (1) factors indicative of the attainment of independence, which include characteristics of international responsibility, eligibility for membership in the United Nations, general international relations, national defense, form of government, territorial government, and economic, social, and cultural jurisdiction; (2) factors indicative of the attainment of other separate systems of self-government, which include opinion of the population, freedom of choice, voluntary limitation of sovereignty, geographical considerations, ethnic and cultural considerations, political advancement, general international relations, change of political status, eligibility for membership in the United Nations, territorial government, participation of the population, and economic, social, and cultural jurisdiction; and (3) factors indicative of the free association of a territory with an inde-

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AND ECONOMY, *NEW TRENDS IN INTERNATIONAL LAW* 7; Andrassy, *id.* at 22; Nincic, *id.* at 34; Radojezovic, *id.* at 65; L. CAVARE, *LE DROIT INTERNATIONAL PUBLIC POSITIF* 523 (1961); 1 G. SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 67 (4th ed. 1960); Green, in *INTERNATIONAL LAW ASSOCIATION, REPORT OF THE FORTY-SEVENTH CONFERENCE (DUBROVNIK)* 57, 58 (1956); R. Y. JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* 78 (1963); Kunz, *The Principle of Self-determination of Peoples, Particularly in the practices of the United Nations*, 1 *STUDIEN UND GESPRÄCHE ÜBER SELBSTBESTIMMUNG UND SELBSTBESTIMMUNGSRECHT* 128, 132 (K. Rahl ed. 1964); Potter, *Legal Aspects of the Beirut Landing*, 52 *AM. J. INT'L L.* 727, 728 (1958); A. VERDROSS, *VOLKERRECHT, FÜNFTE NEUBEARBEITETE UND ERWEITERTS AUFLAGE UNTER MITARBEIT VON S. VEROSTS UND K. ZEMANEK* 576 (1964).

37. See G.A. Res. 334, 4 U.N. GAOR (1949); G.A. Res. 546, 6 U.N. GAOR (1951); G.A. Res. 567, 6 U.N. GAOR (1951); G.A. Res. 611, 7 U.N. GAOR (1952); G.A. Res. 612, 7 U.N. GAOR (1952); G.A. Res. 637, 7 U.N. GAOR (1952); G.A. Res. 648, 7 U.N. GAOR (1952); G.A. Res. 742, 8 U.N. GAOR (1953); G.A. Res. 837, 9 U.N. GAOR (1954); G.A. Res. 1013, 11 U.N. GAOR (1956); G.A. Res. 1184, 12 U.N. GAOR (1957); G.A. Res. 1188, 12 U.N. GAOR (1957); G.A. Res. 1314, 13 U.N. GAOR (1958); G.A. Res. 1514, 15 U.N. GAOR (1960); G.A. Res. 1541, 15 U.N. GAOR (1960); G.A. Res. 1654, 16 U.N. GAOR (1961); G.A. Res. 1810, 17 U.N. GAOR (1962); G.A. Res. 1958, 18 U.N. GAOR (1963); G.A. Res. 2105, 20 U.N. GAOR (1965); G.A. Res. 2131, 20 U.N. GAOR (1965); G.A. Res. 2160, 21 U.N. GAOR (1966); G.A. Res. 2189, 21 U.N. GAOR (1966); G.A. Res. 2311, 22 U.N. GAOR (1967); G.A. Res. 2426, 23 U.N. GAOR (1968); ECOSOC Res. 586D, 20 U.N. ECOSOC, U.N. Doc. E/AC.7/SR289; 1 *REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS* 19, 148 (1955); 1 *REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS*, Supp. 1, at 1, 11, 12, 65-66 (1958); 1 *REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS*, Supp. 2, at 16, 32-33, 41, 46 *passim*, 52 *passim*, 54 *passim*, 173-74 (1964); 3 *REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS*, Supp. 2, at 41 (1963).

38. G.A. Res. 742, 8 U.N. GAOR (1953).

pendent state or its integration with the latter, which include opinion of the population, freedom of choice, geographical considerations, ethnic and cultural considerations, political achievement, constitutional considerations, legislative representation, participation of the population, citizenship, government officials, suffrage, local rights and status, local officials, internal legislation, and economic, social, and cultural jurisdiction.

Within the United Nations, the decolonization movement has proceeded under the International Trusteeship system<sup>39</sup> and through resolutions concerning non-self-governing territories.<sup>40</sup> The trusteeship system applied to territories held under mandate at the time of the adoption of the U.N. Charter, territories detached from enemy states as a result of World War II, and territories voluntarily placed under the system by states responsible for their administration. The terms of trusteeship for each territory were to be agreed upon by the states "directly concerned."<sup>41</sup> In cases where there was a controversy as to which states were "directly concerned," the Security Council and the General Assembly concluded Trusteeship Agreements with the administering authority.<sup>42</sup> Nearly all of the trust territories have by now attained independence.

The term "non-self-governing territories" applies to those territories which were known to be of the colonial type at the time of the adoption of the U.N. Charter,<sup>43</sup> subsequently specified by name by the resolutions of the General Assembly.<sup>44</sup> A non-self-governing territory is deemed to have reached full self-government (1) by emergence as a sovereign independent state, (2) by free association with an independent state, or (3) by integration with an independent state.<sup>45</sup> Under the principles adopted by the General Assembly,<sup>46</sup> the free association under (2) should be the result of a free and voluntary choice by the peoples of the territory concerned through informed and democratic processes, should respect the individuality and cultural characteristics of the territory and its peoples, should permit retention by them of the freedom to modify their status through the expression of their will

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39. U.N. CHARTER, art. 12, art. 13.

40. U.N. CHARTER, art. 11.

41. U.N. CHARTER, art. 79.

42. Parry, *Legal Nature of the Trusteeship Agreement*, 27 BRIT. Y.B. INT'L L. 164 (1950).

43. G.A. Res. 1541, 15 U.N. GAOR, Annex (1960).

44. See, e.g., G.A. Res. 66, 1 U.N. GAOR (1946); G.A. Res. 1542, 15 U.N. GAOR (1960); G.A. Res. 1573, 15 U.N. GAOR (1960); G.A. Res. 1747, 16 U.N. GAOR (1962).

45. G.A. Res. 1541, 15 U.N. GAOR, Annex (1960).

46. *Id.*

by democratic means and through constitutional processes, and should grant the associated territory the freedom to determine its internal constitution. The integration under (3) should be on the basis of complete equality and should occur under circumstances where (a) the integrating territory has attained an advanced stage of self-government with free political institutions, so that its people have the capacity to make a responsible choice through informed and democratic processes, and (b) the integration results from the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage, and supervised by the United Nations when deemed to be necessary. Most of the non-self-governing territories have by now achieved full self-government in one of these three forms.

United Nations practice concerning self-determination may be characterized by a number of elements. First, although self-determination has almost continuously been contended as a right of all peoples, it has in fact been applied only to the colonial peoples, those peoples of trust and non-self-governing territories. The criterion for considering a territory non-self-governing has been that the territory be of the colonial type at the time of the adoption of the Charter. The territorial identification of colonial areas at the end of the World War II replaced the earlier principle of nationality for determining the peoples who were to be accorded self-determination. The implications of this new principle of identification have been significant. While on the one hand certain territories annexed prior to the adoption of the Charter and geographically contiguous to the annexing state have been excluded from the scope of self-determination, such as Estonia, Lithuania, and Latvia, on the other hand the territorial division which had been made arbitrarily by the colonial powers without any regard to the ethnic, social, or cultural factors of the populations involved, as in Africa, has been taken as the basis for deciding where self-determination is to apply. Second, identification of colonial peoples under U.N. practice refers to the majority of the population within a generally accepted political unit and not to the minorities within it, whether racial, religious, or of any other type. Third, the consummation of self-determination is represented by the achievement of self-government or independence for the trust territories and by independence, association with an independent state, or integration with an independent state, for the non-self-governing territories. Fourth, it is deemed within the competence of the General Assembly to supervise the achievement of self-determination by the colonial peoples. Finally, no systematic at-

tempt has been made in the decolonization efforts of the United Nations to consider the possible philosophical, legal or other justifications for limiting the right to independence of territories with very small area or population, although the Special Committee of Twenty-four, which is charged with the task of seeing to the implementation of self-determination, has recognized that there are special problems with respect to such territories.

Elsewhere,<sup>47</sup> I have evaluated the evidence of self-determination, both inside and outside the United Nations, in order to determine whether the doctrine has become a principle of international law through the achievement of a general recognition by states as being obligatory. My conclusion has been that the evidence does not permit an affirmative determination. At best, it appears that once the basic decision for political reorganization or redistribution of power has been made, the principle of self-determination is invoked to attain the result in a desirable fashion. The principle is thus one of political expediency which states may or may not use, rather than one of international law which the states are obliged to follow. The reluctance of states to give the principle of self-determination greater effect is understandable. For once accepted as a legal norm for activating reorganization of the state, the principle would make a lawful disruption of all states possible. Therefore, wisdom might lie in allowing room for a process of judicious political decision-making which preserves, as within the United Nations, the possibility for a constructively flexible approach to the achievement of the ideal which the concept of self-determination represents.

However, the issue of whether self-determination is a principle of international law does not answer the question which is being raised in this inquiry. Within the United Nations the realization of self-determination has thus far meant essentially the decolonization of territories known to be of the colonial type at the end of World War II. This goal has largely been accomplished with most of the colonial countries having now achieved self-determination in one or another of its forms. The question posed by the present article is whether this achievement has exhausted the principle of self-determination. Must the United Nations continue its efforts for the realization of the principle in directions other than the decolonization of the type mentioned above? Or, must the United Nations policy for self-determination cease upon successful completion of decolonization?

The question, in order to be meaningful, immediately demands a

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47. Sinha, *Self-determination in International Law and Its Applicability to the Baltic Peoples*, in *RES BALTICA* 256 (A. Sprudz ed. 1968).

consideration of two basic issues. First, whether the fundamental ideal symbolized by self-determination is larger in its scope than the above decolonization; and second, whether there are peoples other than those considered colonial at the time of the adoption of the U.N. Charter in 1945 for whose political life self-determination may be important.

As to the first issue, it is submitted that the fundamental ideal to which the principle of self-determination appertains is justice for the individual in the sense that the scope of his participation in value choices be made as large as possible. The particular role of self-determination in achievement of this master ideal is to provide such a political and legal structure for society as would yield justice for the individual. In this light, self-determination would not seem to be exhaustively consummated by the decolonization of peoples and territories considered colonial at the time of the adoption of the Charter.

As to the second issue, it is submitted that there may be peoples who have not been subject to the traditional territorial colonialism, but for whose political existence self-determination may nevertheless be important. Two types of such peoples come readily to mind.

The first type includes those peoples inhabiting territories which have been annexed in the past but which, unlike the overseas colonies, are geographically contiguous to the annexing state, for example, the Baltic territories of Estonia, Latvia, and Lithuania. In making this suggestion, the intention here is neither to overlook nor to minimize the problems which would confront the application of self-determination in these cases. In fact, at least five major problems will have to be met:

1. The problem of the principle of identification of the peoples on whose behalf the claim of self-determination is being made.
2. The problem of the means of ascertainment of the desire of these peoples for self-determination. This in turn involves certain subissues:
  - (a) Would it not be too presumptuous to assume the desire from the fact of annexation of their territory by the annexing state at a certain point in history?
  - (b) Would it not be too presumptuous to deduce the desire from the expressions made to the effect by groups-in-exile in other states?
  - (c) Would it not be a violation of the rules of international law as to nonintervention if another state at-

tempted to encourage this expression within the annexing state?

3. The problem of determination of the form in which self-determination is to be realized.
4. The problem of the extent to which an existing state can be disintegrated in order to fulfill the demand of self-determination.
5. The problem of the criterion of the reasonable unit for the creation of the new state, if that is the form in which self-determination is going to be realized in a particular instance.

The second type includes those peoples who are living in a minority position in the existing states, the minority position being a matter of societal status rather than numbers so as to include the nonwhite populations in South Africa or Rhodesia. The Catholics of Northern Ireland, the Pathans of Pakistan, the French-speaking people of Canada, the Nagas of India, the Kurds of Iraq, and the Negroes of the United States are some of the other examples of such peoples. It would perhaps be reasonable to suggest that solutions to the minority problems might first be sought in the constitutional order of the state concerned and must necessarily relate to the circumstances of the particular case. But if the constitutional order of the state refuses to provide the desired solution in defiance of international recognition of the injustice of the situation, the international community, specifically the United Nations, should activate its energies toward the end of self-determination, as demonstrated by U.N. response to the apartheid policy of the Republic of South Africa or Rhodesia. Unfortunately, the refusal of certain important member-states to apply economic sanctions as recommended by the General Assembly has frustrated the international efforts in these cases.

In view of the above discussion, the conclusion is inescapable that the decolonization of nearly all overseas colonies has not rendered the principle of self-determination obsolete. Neither is the content of the principle as dictated by its fundamental ideal exhausted by such decolonization, nor is there an absence of peoples for whose political existence the principle has significance, even though these peoples are beyond the scope of the particular formula used by the United Nations in the past for identifying peoples to whom self-determination is to be accorded.



## **ANNEX 106**

Georg Schwarzenberger, *A Manual of International Law* (5<sup>th</sup> edn, 1967) (extract)

A MANUAL  
OF  
INTERNATIONAL LAW

by

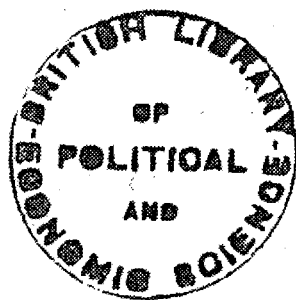
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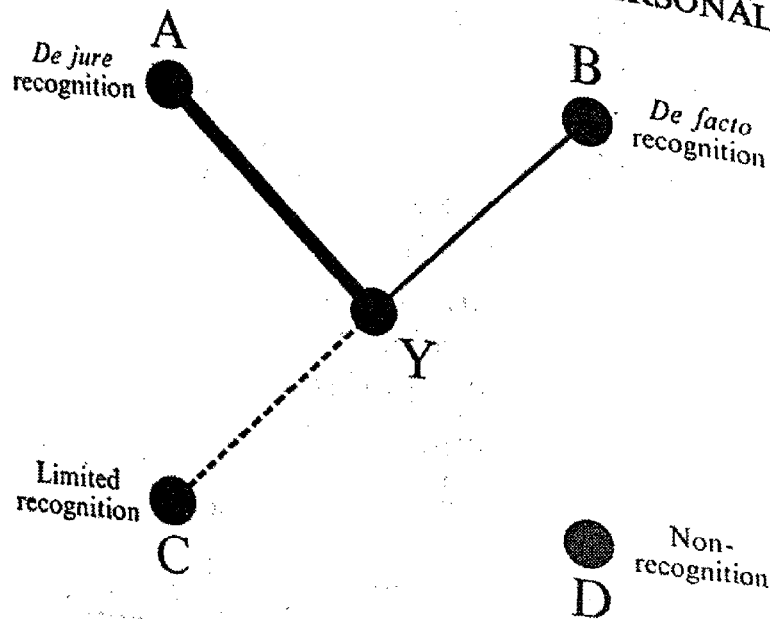
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law to a world authority, the effect of recognition is necessarily *relative*. It is limited to the relations between the recognising and recognised entities. As with titles to territory<sup>7</sup> or with multilateral treaties,<sup>8</sup> the initially relative effects of recognition tend to become absolute in the course of a gradual process of consolidation.

DIAGRAM No. 10

## ACQUISITION OF INTERNATIONAL PERSONALITY

*B. Recognition of States*

The normal method for a new State to acquire international personality is to obtain recognition from existing States. Such recognition may be recognition as a *de facto* or *de jure* State or, more briefly, *de facto* or *de jure* recognition. A State grants another *de facto* recognition if, for any reason, it wishes to delay full recognition. Typical reasons are doubts on the stability of the new State, reluctance of the new State to accept its obligations under international law or its refusal to settle outstanding issues.

*De facto* recognition means that, in relation to State activities in areas under the effective territorial control of the new entity, it is entitled to be treated as a subject of international law. The effects of *de jure* recognition are more far-reaching. The new entity is recognised as a subject for all purposes of international law.<sup>9</sup>

<sup>7</sup> See below, p. 121 *et seq.*

<sup>8</sup> See below, p. 152 *et seq.*

<sup>9</sup> See above, p. 55.

If a State is merely recognised *de facto*, its claims to public property situated abroad may well be ignored by the recognising State, especially if the latter is faced with competing claims by another entity still recognised *de jure*. By way of contrast, the property situated abroad of a State which is recognised *de jure*, and in a state of peace with the recognising State,<sup>10</sup> is fully protected and entitled to immunity from local jurisdiction.<sup>11</sup> Moreover, as distinct from *de facto* recognition, the typical intention in the case of *de jure* recognition is to avoid any legal vacuum. The recognising State is, therefore, taken to let *de jure* recognition date back to the time when the newly recognised entity first proclaimed its existence as a new State.

Until *de jure* recognition is granted, diplomatic relations between the States concerned fall short of the appointment of fully accredited diplomatic envoys.<sup>12</sup> Thus, in case of doubt, diplomatic representation implies *de jure* recognition. A growing tendency exists to assimilate the effects of *de facto* and *de jure* recognition in a number of fields. This applies in particular to the grant of diplomatic and State immunities and the extraterritorial effects of municipal acts, such as legislation and judicial decisions by organs of an entity which has obtained *de facto* recognition, and especially when there is no competing entity which is still recognised *de jure*.

The recognition of a new State means more than the confirmation of the political independence of an entity in relation to a given territory. Recognition is granted for a purpose and on an assumption. The purpose of recognition is to endow the new entity with capacity, *vis-à-vis* the recognising State, to be a bearer of right and duties under international law and participate in international relations on the footing of international law. The assumption is that the new entity on which such capacity has been conferred is capable and willing not only to claim the benefits of international law, but also to abide by its rules.

If a State, whether an original or a co-opted subject of international law, persistently violates international law, it is arguable that, by way of reprisal,<sup>13</sup> other States may withdraw recognition of the offender as a subject of international law and treat it as an

<sup>10</sup> See below, p. 452 *et seq.*

<sup>11</sup> See below, p. 102 *et seq.*

<sup>12</sup> See below, p. 82 *et seq.*

<sup>13</sup> See below, p. 184 *et seq.*

international outlaw. As in municipal law, outlawry in international law is a confession of weakness. Unless followed by war and annexation<sup>14</sup> or complete ostracism of the law-breaker, this form of retaliation is symbolic rather than of practical significance.

Compliance with legal duties towards existing subjects of international law may *prevent* an existing subject of international law from recognising an entity as a new subject of international law. International customary law does not, however, know of any duty to *grant* recognition to any entity. The principle of national self-determination is a formative principle of great potency, but not part and parcel of international customary law. In their *inter se* relations, States are free to incorporate the principle into international law and to commit themselves towards one another to apply the principle in relation to territories under their control. While, in the Charter of the United Nations, the principle of national self-determination remains one of a number of desirable objectives, the Trust Agreement on Somaliland (1950)<sup>15</sup> and the Anglo-Egyptian Agreement on the Sudan (1953)<sup>16</sup> illustrate the potentialities of the principle as an optional principle of international law.

### C. Recognition of Governments and Heads of State

Whereas recognition of an entity as an independent State confers upon it international personality *vis-à-vis* the State granting such recognition, the recognition of a government or rival governments normally means something different. When a foreign government is recognised, the international personality of the State which it represents is, as a rule, taken for granted. The typical intention is to acknowledge that an existing subject of international law considers the head of State or government recognised as entitled to speak for, and enter into legal commitments on behalf of, the State concerned. In exceptional cases, as with the British recognition of Israel, recognition of a government is intended to convey an implied recognition of the international personality of a new State.

Similar to the *de facto* and *de jure* recognition of new States,<sup>17</sup> it is possible to recognise a government of a State, the international

<sup>14</sup> See below, p. 215 *et seq.*

<sup>15</sup> See below, p. 310 *et seq.*

<sup>16</sup> See below, p. 429 *et seq.*

<sup>17</sup> See above, p. 72.

## **ANNEX 107**

JHW Verzijl, *International Law in Historical Perspective* (1968) (extract)

# NOVA ET VETERA IURIS GENTIUM

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# INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE

BY

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VOLUME I

GENERAL SUBJECTS



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## PREFACE

When in 1965 the Editor of the present series was privileged to preface Volume I of Professor VERZIJL's *Jurisprudence of the World Court*, the second Volume of which was published in 1966, he could hardly foresee that within the very short span of three years the first part of an even more ambitious project by the same author would be realized and ready for publication.

The first thing the Editor wishes to record this time is his unreserved admiration for the major "feat of arms" which his predecessor in the chair of international law in Utrecht University at his age intends to perform and, partly, has already completed. If anything, the fact bespeaks the author's total dedication to the subject which, standing in a centuries-old tradition, he taught for so many years. A preface not being the proper place for it, all further eulogies should be withheld here. Professor VERZIJL's feelings of modesty might even be hurt by too general an appreciation in which an elaborate weighing of his thought does not come foremost. However, it should certainly be observed that, once the present project has been brought to an end, there will be good reason to rejoice at the possibility for present and future generations not familiar with all of the several languages in which VERZIJL's individual contributions were written of assessing his definite place in the science of international law, in the Netherlands as well as in the world at large.

In his own Introduction to this new work of his, the author himself expands sufficiently on the genesis and the nature of his *International Law in Historical Perspective* to make any further comment superfluous. One feature of it, however, remains to be emphasized. It lies in the field of the history of international law publications in this country. Fortunately, treatises on international law published in the Dutch language are far from exceptional, but one has to go back to the year 1920 to find one written in a foreign language: *Le droit international public positif* in two volumes (Publications de la Dotation Carnegie pour la Paix internationale) by a scholar who was Professor VERZIJL's predecessor in Utrecht, Professor Jan DE LOUWER. The work, an earlier Dutch version of which is also extant, is still read and quoted in connexion with a number of important aspects of the subject and, astonishingly, more frequently so by foreign writers than by their Dutch colleagues. It is a notable event now to witness Professor VERZIJL embarking on an enterprise similar to that of DE LOUWER.

States under the Trusteeship System were not bound to accept General Assembly Resolutions recommending a specific course of action to them, they were nevertheless under *some* legal obligation, "however rudimentary, elastic and imperfect", namely, "to give due consideration to them in good faith", he further construed the juridical situation as follows:

"Thus an Administering State which consistently sets itself above the solemnly and repeatedly expressed judgment of the Organization, in particular in proportion as that judgment approximates to unanimity, may find that it has overstepped the imperceptible line between impropriety and illegality, between discretion and arbitrariness, between the exercise of the legal right to disregard the recommendation and the abuse of that right, and that it has exposed itself to consequences legitimately following as a legal sanction" (p. 120).

This juristic construction would seem to me to be unnecessary and even self-contradictory if the preceding argument is correct that there is precisely no unlimited "right to disregard a recommendation", but only a right curtailed by a (slight) legal obligation.

There are, however, perhaps—relatively rare—cases in which a State could correctly be accused of exercising a right abusively. A standard example of this is the casting of a negative vote in the Security Council or the General Assembly of the United Nations by a Member State, on the occasion of the request of a State for admission to the Organization, on the ground (which is at variance with the legal rules governing the admission procedure) that other applicants for membership should be admitted simultaneously.<sup>3</sup> Should the theory of the inadmissibility of the abuse of right(s) be taken seriously in a case like this, that would, according to sound legal principle, entail the voidance of the vote determined by an illegal motive. I doubt, however, if the defenders of the theory would accept this consequence. Moreover, the nullity of the negative vote cast would not thereby be transformed into a positive vote.

3. Comp. on this controversy the advisory proceedings of 1948 before the International Court of Justice, analysed in my paper in *The Jurisprudence of the World Court*, vol. II, pp. 3 *et seq.*

## THE RIGHT OF SELF-DETERMINATION

Seldom has there been advanced as a legal right a claim so obviously of a political nature and of such a slogan-like quality as the so-called "right of self-determination". And seldom has a would-be right been exercised or negated with such evident arbitrariness and with such flagrant international hypocrisy as this. The cause of this is easy to diagnose: this so-called "right" is entirely undefinable and its superficial attractiveness wins it a useful popularity which makes it a convenient plaything both for international politics and propaganda.

As a phrase the right of self-determination did not turn up until President WILSON inadvertently coined it in connection with his famous Fourteen Points, but the idea which underlay it had already been espoused at an earlier stage, in particular by the French Emperor NAPOLEON III. In those days, however, it still had a definable content since it was concerned with the organization of plebiscites in border areas which had a disputed national character. As such it was completely in line with contemporary political movements such as that which resulted in the final unification of Italy on the basis of the principle of (ethnical and cultural) "nationality". Comp. on *Le principe des nationalités* Robert REDSLOB's lecture in the Hague Academy of International Law, 1931-III, t. 37.

When President WILSON was confronted at the Peace Conference of Paris with the task of implementing his own principle, he soon awoke to the stark truth of its chameleon-like nature and incalculable political consequences. And it is certainly on good grounds that his Secretary of State Robert LANSING wrote in his diary of *The Peace Negotiations* the remarkable words:

"The more I think about the President's declaration as to the right of "self-determination", the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands ... The phrase is simply loaded with dynamite ... What a calamity that the phrase was ever uttered! What misery it will cause!"

And untold misery it *has* caused, not only in its implementation but also in its overt disavowal, according to which way the political weather-cock swung.

A "right of self-determination" was nowhere, expressly or implicitly, admitted in the Covenant of the League of Nations.<sup>1</sup> It was, however, incorporated in the Charter of the United Nations where it appears in Article 1 (2). But even there it was not positively and with any palpable content conferred on anybody in particular, it was not even conferred directly, it was simply introduced somewhat deviously in an aside as giving general guidance for the future conduct of international relations. The provision concerned, in fact, merely runs as follows:

"The Purposes of the United Nations are ... (2) 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 (emphasis applied)."

What, in the context of this vague "Purpose", is meant by "nations", what by "peoples" and what by "the principle of (the latter's) self-determination"?

The word "nations" in the formula employed is obviously meant to be the equivalent of "States". It has nothing to do with national groups, in the ethnical sense, within the State and does not regard the reciprocal attitude of the numerous "nationalities" packed together *e.g.* in the Soviet Union, India and Indonesia. The provision does not allude to *their* peaceful behaviour *inter se*.

The word "peoples" is more equivocal. There is nothing forced in an interpretation which attributes to this word, read in its context, the meaning of important groups of the population of a State which differ from each other by ethnical, cultural, linguistic, religious or possibly other characteristics, as the case may be. In this interpretation the programmatic aim of the provision is to secure equality of rights and "self-determination" to all such different "peoples" within the State: Carelians and Georgians in the Soviet Union, Tibetans in China, Bantus in the Republic of South-Africa, Chinese and Papuans in Indonesia, Negroes in the United States, backward natives in some South-American States, Jews in Arab countries, etc., without, however, the slightest indication how far this meaning of the word "peoples" can be stretched and to whom it falls to decide which of such groups can still be considered to be "peoples".—However, there is nothing forced either in quite a different interpretation which conceives the word "peoples" in the political sense of comprising all those individuals who constitute together the personal substratum of the State and, therefore, as equivalent to "na-

1. The principle—or slogan—was however adopted by Soviet-Russia in the text of her peace treaties with Estonia (2 February 1920, Martens, N.R.G.<sup>3</sup>, XI, 864), Article 2; Lithuania (12 July 1920, *ibid.*, 877), Article 1; and Latvia (11 August 1920, *ibid.*, 888), Article 2, where it is expressed as "the right of all peoples, proclaimed by the R.S.F.S.R., to free self-determination, including complete severance from the state of which they form part."

tions". In that interpretation the programmatic object of the provision is to secure to all States alike equality of rights on the international level, equal freedom to organize their national life according to their own ambitions and ideology, in short: their right of "self-determination".

This latter concept will consequently necessarily assume a totally different notional colouring according to whether the "principle of self-determination" applies to the "people"-nation-State or to the "people"-national group within the State. In the former case the State is given the fundamental right to regulate its own national existence as it thinks fit, *e.g.* by forcing its different "peoples" into one unitary or one-party system; in the latter case it is just those "peoples" which must be given freedom to organize their life politically as *they* think fit, on a footing of equality. The two aspects may in practice be completely antagonistic.

It is hardly surprising that such a curious ambiguity has led to confusion and to heated discussion. It is significant for the manner in which basic controversial questions such as these are handled in a pseudo-judicial political milieu that, instead of cutting the legal knot and accepting one or the other of the opposing interpretations as the correct one, the General Assembly of the United Nations simply combined the two meanings in its Resolutions I and II of 16 December 1952, proclaiming (under I) that

"Whereas the right of *peoples and nations* to self-determination is a prerequisite to the full enjoyment of all fundamental human rights, ... the States Members of the United Nations shall uphold the principle of self-determination of all *peoples and nations*",

and (under II)

"respect for the right of self-determination of *peoples and nations* ..., in particular with regard to the peoples of Non-Self-Governing Territories",

while, curiously enough, under III the formula is again confined to

"ways and means of ensuring international respect for the right of *peoples* to self-determination".

It is quite obvious that there was no unanimity, nor even a clear understanding in this august body of what exactly they were resolving about.

The principle, however solemnly proclaimed, is in actual fact intractable as a legal principle, and its juristic purport is, as I have pointed out, all but undefinable. Not only does the asserted right lack a specified and even specifiable holder, but its substantive contents and the extent of its possible operation are also floating in the air. It has been often applied through the organization of a plebiscite, or the voluntary grant or forcible extortion of independence, but it has presumably been far

more frequently disavowed. Time and again a "people" which had itself been granted independence on the strength of the principle itself immediately afterwards denied it to its own "peoples"—Kenya's attitude towards her Somali subjects in her north-eastern region—, or even refused to discharge specific commitments undertaken in that respect—Indonesia's refusal to honour her obligations under Article 2 of the Agreement with The Netherlands on Transitional Measures, annexed to the Covering Resolution sub II, A, 3 of the Round Table Conference of 2 November 1949 (*U.N.T.S.*, vol. 69, p. 266). Diverse forms and degrees of "self-determination" have been practised: the grant of full sovereignty, the award of autonomous regimes of various types within the State, the introduction of a system of federation, the recognition of the right to join another State, either as an autonomous entity or by a simple merger, and so on. There are instances of an initial promise or grant of self-determination in one variant or another having been later, under changed political circumstances, withdrawn or revoked. It has even been formally denied to "peoples"—those of Austria and Hungary in 1919-1920—by an international compact. Foreign States have interfered, even to the extreme extent of threatening war, to contest the kind of solution which had been reached in common accord by other "peoples"—President Sukarno of Indonesia's policy of "confrontation" against the Federation of Malaya. The right has on more than one occasion formed the object of international arbitration or other forms of adjudication, owing to disagreement on its application between two States—dispute between Chile and Peru on the provinces of Tacna and Arica. It has been invoked even against preceding agreed treaty solutions which were themselves applications of the principle—as in the case of the compromise of 1960 regarding Cyprus.

The "right of self-determination" has, in conclusion, always been the sport of national or international politics and has never been recognized as a genuine positive right of "peoples" of universal and impartial application, and it never will, nor can be so recognized in the future. It would indeed in its general implementation prove a constant source of disruption and subversion, and the international legal order of established States will never be prepared to acknowledge with sincerity its universal existence as a matter of law or right. "Peoples" may fight for it and win or lose; they may succeed in persuading their own State to grant it by peaceful argument, or fail, completely or in part, to do so. But it is one of those realities of international life which do not lend themselves to rigid regulation by law, that is, by a mandatory rule, impartially applying and applied to all identical cases and susceptible of a juristic definition. And for the sake of the law itself it is better that it should remain so, for, worse than leaving the issue at the mercy of the unceasing political game would be to create a rule of law which would

from the outset be inevitably infected by an ineradicable taint of international hypocrisy, and therefore unworthy of the appellation of a rule of law. For while it can do good as an honourable maxim, it can as easily do harm as a political slogan. And what would be the upshot of a world-wide implementation of the asserted right in terms of human happiness? The past should have sufficed to teach humanity its lesson.

I can only bear out this frank expression of opinion and exemplify the various aspects of the problem by summarily grouping and briefly describing a number of historical instances and variants of the application, respectively the disavowal, of the asserted "right of self-determination". Many of these instances have for a long time in the past disturbed, or are still at the present time disturbing, the balance of "peaceful coexistence".

In by far the great majority of cases of cession or adjudication of territory the fate of its population has been decided without any form of consultation. Where a "right of self-determination" was put into practice, this was done in various ways.

One of the best known methods was that of organizing a plebiscite as a precondition of a territorial change. This procedure flourished in the days of Emperor NAPOLEON III of France and the unification of Italy, and much later again on the liquidation of World War I.

The final national movement in Italy began in 1860 with the deposition of the dynasties in Toscana (Florence), Modena and Parma, and a revolt in the Romagna (the northern part of the Papal States, comprising the four *delegazioni* of Bologna, Ravenna, Ferrara and Forli), confirmed by plebiscites of 11/12 March 1860 in favour of merger in an all-Italian kingdom, accepted by King VICTOR EMANUEL II on 18/22 March. The position taken by the Pope on that occasion and, for that matter, again in 1870, clearly demonstrates that the Holy See did not recognize any "right of self-determination", either as a principle of positive international or of "natural" law. On the contrary, Pope Pius IX strongly condemned such revolutionary movements, and even pronounced a ban against their sponsors, on 26 March 1860 anathematizing all those involved in an encroachment upon his own sovereign rights in the States of the Church. Comp. for further details Part II of this publication.

Sometimes the consultation of the population in this same period took the form of a vote by its representatives in the local Parliament, as was the case of the Ionian Islands in 1863. See the preamble of the Treaty of London of 29 March 1864 (Martens, N.R.G.<sup>1</sup>, XVIII, 63).

A new wave of plebiscites followed as an aftermath of World War I, when consultation of the population of specified disputed areas, especially in Germany and the former Austro-Hungarian Empire, was made a



prevailing chaos. As I have already said I will only touch upon the three points mentioned and spare you all technical expositions; for that this is certainly not the place.

Firstly, one must as a lawyer always continue to struggle to establish as sharp a distinction as possible, also in inter-state relations, between rules of conduct which are recognized in a specific legal order as binding, and a mass of other norms which should perhaps ideally be in force but which at a given historical moment are not. Whoever does not clearly keep this distinction in mind is in the field of international relations immediately exposed to the danger of going astray and finding himself in the quicksand of more or less arbitrary legal desiderata, or more or less soundly based conceptions about what justice would seem to require in concrete situations, of political catchwords and ideologies. The reactions of the public at large to the international events of the recent past, at least as far as they were not simply the outcome of a lack of historical knowledge or of ignorance about the international law in force, were from that point of view extremely interesting. Indeed, insofar as those reactions had their deeper roots in an intuitive sentiment of justice (the contents of which were, for the rest, often diametrically opposed to one another), they were of a nature to provoke serious doubt if the law of nations, conceived as a system of positive norms expressly or tacitly adopted by the States as binding within their circle, has for the time being any future. If indeed undeniable violation of equally undeniable legal norms—as has taken place in the Czechoslovakian crisis—is so easily condoned, not only by the masses, but regrettably also by many servants of legal theory, by a reference, unreasoned and as a result often the firmer and less easily refutable, to the postulates of an asserted international justice divorced from the positive law in force, then this law loses its only possible foundation: the general legal conviction that States are bound by their commitments voluntarily contracted. International law stands or falls with the increasing penetration or collapse of that conviction.

Theorists of the law of nations of former centuries have either failed to discern this distinction clearly, or have still been unable to act upon it, or refused to recognize it. Hence it is that the famous representatives of the doctrine of international law of the past have dished up for us as the authentic law of nations an aggregate of prescripts composed of the most heterogeneous elements. Side by side with a limited number of rules which were actually observed as binding in international practice, they introduced onto the scene a much more extensive selection of norms drawn from the most diverse and sometimes most singular sources, a hotchpotch of, for the most part imagined, commands with which international reality did not in any way correspond, and to obey which no State had ever obliged itself or felt itself bound. I emphasize here in

particular the last point: the recognition of the legal obligation, otherwise the objection would be too obvious: is it then so much better with the present positive law of nations? Anything but, on the contrary. The experience that the doctrinal law of nations of former centuries was not observed is easily explained by the fact that it was for the greater part a set of rules, dreamt up by legal and other writers, to which no State had submitted itself and which no State had accepted as binding rules of conduct. In contradistinction thereto the present-day law of nations is an aggregate of concrete rules, for the major part expressly and voluntarily adopted as directives of conduct which nevertheless are violated, by many States occasionally, but continuously by a smaller number—the true demons of the present-day society of nations, who brazenly deny the authority of the law. The situation has thus, from a moral point of view, become much more serious than before. What is not being observed at present is binding law which consequently is violated. What was not observed in former times could *not* be violated because it was not binding, however many elements may have been comprised within it that deserved at some time in the future to be adopted as law by the international community.

Even nowadays authors are not far to seek who present as international law a multitude of rules that have never been adopted as binding standards of conduct and lack all international authority as such. These rules are either political slogans cast in juristic formulation, or deductions from an ecclesiastical code of morals, or merely individual inventions; these latter I do not propose to deal with at all. It is especially those political slogans masquerading in the disguise of “legal principles” that play an extremely dangerous rôle in the life of inter-state society.

One of the instances of a claim which does not belong to positive international law but either to the field of political slogans, or to that of asserted postulates of future international organization, or at the utmost to that of desiderata of international law, is the so-called “right of self-determination” which is again invoked so passionately at the present time. This right never formed, nor does it form even at present, part of positive international law, and neither will it presumably ever in the future become, or even be capable of becoming, the subject of a genuine rule of international law vested with an enforceable universal validity and binding authority on all the members of the inter-state society. Even in 1919, when the idea experienced a certain heyday, this principle has only temporarily and partly passed into positive international law in so far as specific States obliged themselves towards specific other States to apply it on a limited scale, and to the extent that that undertaking has not been carried into execution in fact—on this disputed point much could be said—international law has indeed been violated. But for the

rest the right of self-determination has remained even in 1919 what it had been in the past, still is at present and will indeed have to remain in the future: a more or less reasonable desideratum, a more or less honest political rallying cry. The one-sided nature of its application on the reorganization of Europe after the (first) World War in itself demonstrates the prevarication of its professed advocates at the time, and the merits of the call for self-determination are not much better in 1938. The attitude recently taken towards Czechoslovakia by Poland and Italy, though themselves at fault with regard to their unfairly treated minorities of various kinds, shows a bare-faced lack of honesty, just as the ultimatum of Godesberg and the enforcement after the Munich deal of additional German claims to Czech areas which were not inhabited in considerable numbers by Germans, give glaring proof of the insincerity of the Third Reich. In any case the claim for self-determination does not constitute a "right" but only a conspicuous item in a political programme. An asserted right of specific groups of people to self-determination is, moreover, much too vague for reception as a universally binding norm in the positive law of nations. It is inherently impossible for it to form a universal basis of concrete rights and obligations under international law and accordingly it invariably presents itself in practice as a scarcely veiled instance of measuring with two measures. It does not lend itself to elaboration in precise rules of law and even its supposed implementation would in any case have to be mitigated by a number of other, counteracting principles which it would not be any easier to work out in clear-cut rules. Should this and other comparable "rights"—I refer to Germany's claims to be allowed to intervene in the affairs of *Volksdeutsche* in other countries, to be repossessed of an equal share in colonies, to the free access to raw materials, to the revision of situations held to be unsatisfactory, etc.—nevertheless be incorporated into the positive law of nations, this incorporation would adulterate that law into a wholly misleading heterogeneous mass and irrevocably compromise its already slender authority.

Equally outside the scope of international law lies that other group of principles, alluded to above, which despite their lack of recognition as binding precepts and their failure to actually obtain in the inter-state community, are nevertheless presented as law: certain theoretical rules of conduct for inter-state relations, *e.g.* regarding the conditions of a just war, as gauged by the canonical doctrine. Those norms also do not constitute international law, neither in the political secular ambit nor even, as experience proves, in the sphere of their ecclesiastical origin. Whereas the doctrine of the Church respecting the problem of *bellum justum* applies to the latter a "material" criterium, mainly inferred from the alloy of substantive justice present in the causes or the aims of a war, the secular law, which for that matter in adopting such a substantive

criterium would be supplied with an in practice entirely unserviceable standard, rather tends to employ a more "formal" criterium, borrowed from the preparedness or lack of preparedness of the parties to a dispute to submit it to impartial third persons, to comply with their verdict and so on. These two criteria may not coincide at all and only the latter, the formal criterium, can be said to have found a foothold in the positive law of nations. The attitude of the Roman Church vis-à-vis the Italian campaign against Abyssinia demonstrates convincingly that the canonic doctrine does not obtain in fact in the ambient of its origin: that campaign was indeed a *bellum injustum* both by the standard of secular law and by that of the principles traditionally professed by the Church.

By the same token, to cite a well known example from the political sphere, the so-called STIMSON doctrine does not *as such* belong to positive international law. This declaration, made by the American Secretary of State on 7 January 1932 to the effect that the United States did not intend to recognize any situation or agreement which had been effected by means contrary to the KELLOGG Pact has never established any legal bond because it was nothing more than the unilateral enunciation of a political programme. Neither has the subsequent adoption of the same principle by quite a number of other States made any change as far as they were concerned in the original character of the declaration. When, following in the footsteps of other governments, the Netherlands Government in its turn recognized in 1936 King VICTOR EMANUEL III of Italy's purloined title of Emperor of Ethiopia, it could not, therefore, be said to commit a violation of international law because of its disregard of the STIMSON doctrine. That it nevertheless by that recognition has committed a clear and grave breach of the law of nations has its ground elsewhere, *viz.*, in its violation of legal commitments implied in Article 10 of the League of Nations Covenant. I am fully aware that attempts have been made to juristically reason-away even that commitment, but to my mind that reasoning is juristic sophistry at its worst, and I prefer to pass over it in silence. International lawyers have, alas, from the outset done immeasurable harm both to the League of Nations and to its law by their asserted construction of legal texts by the method of constantly detracting from their obvious purport, by sticking strictly to the letter of the law and ignoring its spirit, by killing other provisions which could be rendered nugatory only by this method, or by, in cases where just the inverse was necessary, interpreting into them meanings which were completely foreign to them. But I am not going into that any further: the evil is in any case irreparable.

Also the second point that I mentioned as raising a difficulty, I can only touch upon to-day, *viz.*, the undeniable fact that in the present positive law of nations—that is, in those regulations which have been laid down by the international legal order as generally binding rules of

## **ANNEX 108**

R.Y. Jennings, *The Acquisition of Territory in International Law* (1963) (extract)

THE ACQUISITION OF  
TERRITORY  
IN INTERNATIONAL LAW

by

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## THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW

But certainly one of the touchstones of this type of essentially political argument, though with legal elements, is that it is inconclusive in the sense that it may usefully be applied to some situations though not to others. It calls for a political decision whether to apply it in a given case or not.

### SELF-DETERMINATION

Another, and perhaps the most generally recognized, of these guiding principles for the determination of the proper destiny of territories is the principle of self-determination. This has not only a long and respectable tradition but is also sanctioned by Article 1 of the United Nations Charter, which makes one of the purposes of the Organization 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.<sup>1</sup> It must be emphasized, however, that this again, though it has legal overtones, is essentially a political principle which may be a useful guide in the making of political decisions. It is not capable of sufficiently exact definition in relation to particular situations to amount to a legal doctrine; and it is therefore inexact to speak of a 'right' of self-determination if by that is meant a legal right.<sup>2</sup> We have already noticed that self-determination may pull in the opposite direction from both geographical and historical factors.

Self-determination is frequently coupled with the technique of plebiscite to give it practical realization; though it is clearly a technique suited only to particular kinds of situations, needs careful international control if it is not to be abused, and usually depends in any case upon the initial agreement of the parties concerned.<sup>3</sup> It seems likely that the plebiscite still has a part to play in certain kinds of situation for resolving the question of the proper destina-

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the legal from the political issues, since the Committee was essentially a political and not a legal body.

Cf. also the position of the Guatemalan claim to Belize (British Honduras) and the Guatemalan refusal to act upon the United Kingdom's specific acceptance of the compulsory jurisdiction of the I.C.J. for this dispute. See Waddell in *American Journal of International Law*, vol. 55 (1961), p. 464.

<sup>1</sup> See also Art. 55.

<sup>2</sup> See Schwarzenberger, *A Manual of International Law*, 4th ed., 1960, p. 67: 'The principle of national self-determination is a formative principle of great potency, but not part and parcel of international customary law.'

<sup>3</sup> See, however, *Oppenheim-Lauterpacht, op. cit.*, p. 551, for a discussion of the view sometimes held that a treaty of cession is invalid unless sanctioned by a plebiscite.



tion of certain kinds of territory; and indeed the United Nations has already organized plebiscites on a number of occasions.<sup>1</sup>

So, to sum up thus far, we find a number of these quasi-legal ideas—and there are others we have no time to pause over—that may appear in several different contexts: they may be used to support claims of States to territory presently in the hands of others; they may appear as ancillary arguments in such claims primarily based upon an allegation of present *title* to territory occupied by another State; they may appear in judgments of tribunals as lending weight to a decision arrived at on more strictly legal reasoning; and finally they may be employed in the actual making of political decisions concerning the destination of particular territories. This latter consideration immediately raises the further question how far there are any established international procedures for making decisions of this kind; i.e. not judicial determinations of existing title on the basis of law but decisions concerning changes in title; or, if you like, a process of quasi-legislation in the matter of sovereignty over territory. And to this question we must now turn.

#### ✓ PROCEDURES FOR POLITICAL DECISIONS RESPECTING TERRITORY

Clearly, wherever there arises a dispute over territory this may in one way or another come within the jurisdiction of the United Nations, particularly under chapters VI or VII of the Charter; and decisions or recommendations of the Security Council, or recommendations of the General Assembly may become relevant to the resolving of the dispute. The United Nations has been involved, for example, in what have been, at least in part, mixed political and legal disputes over territorial sovereignty in respect of Kashmir, Israel, Indonesia, West Irian, Kuwait, the Congo, and South-West Africa, to name only the ones that come obviously to mind. To pursue this general jurisdiction further would be to embark upon an investigation of United Nations jurisdiction generally; nor is there opportunity in the space of one lecture to attempt a case history of the

<sup>1</sup> For Togo, under British administration, on November 7, 1959; in British North Cameroons on November 7, 1959; for both parts of the British Cameroons on February 11–12, 1961; for West Samoa on May 9, 1961. For the U.N. experience with plebiscites see Marcel Merle in *Annuaire Français de Droit International*, 1961, pp. 425 ff. Merle would add to the four examples of plebiscites proper indicated above, the U.N. supervision of the legislative election in French Togoland in April, 1958, and the referendum in Belgian Ruanda-Urundi in September, 1961. See also Agreement of 1962 over West New Guinea, p. 76 n. 1 above.

## **ANNEX 109**

Ian Brownlie, *Principles of Public International Law* (1966) (extract)

# PRINCIPLES OF PUBLIC INTERNATIONAL LAW

By  
IAN BROWNLIE

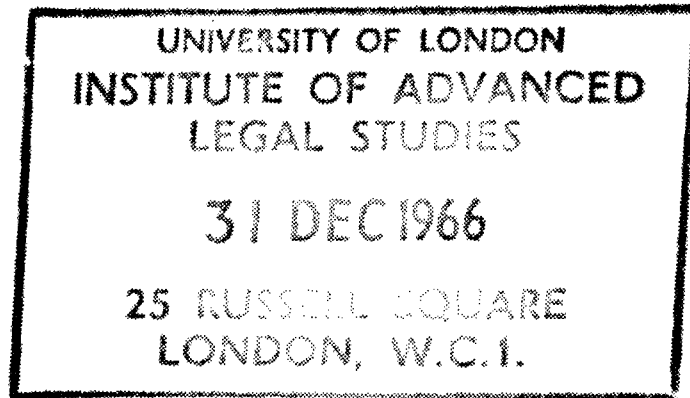
*Of Gray's Inn, Barrister-at-law  
Fellow of Wadham College, Oxford*

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in such a way as to exclude the German Communist Party from the protection of the Convention.<sup>1</sup>

More interesting than the political factors, however, and more within the competence of the jurist, are the practical questions involved in giving procedural capacity to individuals. There is considerable difference between giving the individual full procedural capacity and, or, the right to initiate proceedings, on the one hand, and arranging for a state, or international organization, or a part thereof acting as *amicus curiae* (cf. the European Commission of Human Rights) to 'represent' the individual in an indirect way, supplying the tribunal with the views of the individual whose rights and interests are directly affected by the proceedings. In the former case especially questions of legal costs loom large, and arrangements for legal aid would be very necessary.<sup>2</sup> More detailed work is called for on problems of procedure and the enforcement of decisions in the case of individual claims. The finding of solutions to the practical problems involved will no doubt be complicated by the need to resort to devices which will make governments more ready to take part in arrangements without seeming to depart from their more inflexible positions on the large question as to whether the individual is a subject of international law.

### 9. *The Principle of Self-Determination*<sup>3</sup>

It is not necessarily the case that there is a divorce between the legal and human rights of groups, on the one hand, and individuals, on the other. Guarantees and standards governing treatment of individuals tend, by their emphasis on equality, to protect groups as well: this is obviously so in regard to racial discrimination. Many instruments of the type recorded earlier stipulate for rights 'without distinction as to race, sex, language, or religion'.<sup>4</sup> However, in certain contexts, such as trusteeship

<sup>1</sup> Appeal by German C.P. against decision of the Federal Constitutional Court of 17 August 1956 declaring it to be illegal and dissolving it. Several member states of the Council of Europe have large Communist Parties.

<sup>2</sup> In proceedings under the European Convention, the Council of Europe now provides free legal aid.

<sup>3</sup> See Mirkine-Guetzévitch, 83 *Hague Recueil* (1953, II), 326-51; Rousseau, pp. 80-82; Nawaz, *Duke L.J.* (1965), pp. 82-101; Scelle, *Spiropoulos Festschrift* (1957), pp. 385-91; Wengler, *Rev. Hell. de d.i.* 10 (1957), 26-39; Levin, *Soviet Year-Book of I.L.* (1962), pp. 45-48 (Eng. summary); Chakravarti, *Human Rights and the United Nations* (1958), pp. 104-19; Tunkin, *Droit international public, problèmes théoriques* (1965), pp. 42-51; Lachs, 1 *Indian Journ.* (1860-1), 429-42; Whiteman v. 38-87.

<sup>4</sup> Cf. U.N. Charter, Art. 1 (3); European Conv. for the Protection of Human Rights, Art. 14. Many applications to the European Commission of Human Rights from Belgian sources have concerned the rights of communities in relation to the language question in Belgium.

in the United Nations Charter, the rights of a certain population as such are protected.

The rights of important groups as such become particularly prominent in connexion with the principle, or right, of self-determination,<sup>1</sup> viz., the right of cohesive national groups ('peoples') to choose for themselves a form of political organization and their relation to other groups. The choice may be independence as a state, association with other groups in a federal state, or autonomy or assimilation in a unitary state. Until recently the majority of Western jurists assumed or asserted that the principle had no legal content, being an ill-defined concept of policy and morality.<sup>2</sup> Since 1945 developments in the United Nations, and the influence of Afro-Asian and Communist opinion, have changed the position, and some Western jurists now admit that self-determination is a legal principle.<sup>3</sup> The generality and political aspect of the principle do not deprive it of legal content: in the *South West Africa cases (Preliminary Objections)*<sup>4</sup> the International Court regarded the terms of Article 2 of the Mandate Agreement concerned as disclosing a legal obligation, in spite of the political nature of the duty 'to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory'.

Although reference is often made to the declarations in the Atlantic Charter of 14 August 1941,<sup>5</sup> the key development was the appearance of references to 'the principle of equal rights and self-determination of peoples' in Article 1, paragraph 2, and Article 55 of the United Nations Charter.<sup>6</sup> Many jurists and governments were prepared to interpret these references as merely of hortatory effect, but the practice of United Nations organs has established the principle as a part of the law of the United Nations. In Resolution 637 A (VII) of 16 December

<sup>1</sup> French equivalents are: droit des peuples à disposer d'eux-mêmes, droit ou principe de libre disposition, d'auto-disposition, de libre détermination.

<sup>2</sup> Prior to 1945 references in the legal sources are rare. See, however, the report of the Committee of Jurists on the Aaland Islands question in 1920: see Padelford and Andersson 33 *A.J.* (1939), p. 465 at p. 474. Cf. Rousseau, pp. 80-82; Briggs, p. 65; Hyde i. 363, 389; Hackworth i. 422. The principle is referred to in Soviet treaties concluded in the period 1920-2.

<sup>3</sup> See Scelle, *op. cit.*; Starke, *An Introduction to International Law* (5th ed.), pp. 115-17; Quincy Wright, 98 *Hague Recueil* (1959, III), 193; Wengler, *op. cit.*

<sup>4</sup> I.C.J. Reports (1962), p. 319. Cf. Waldock, 106 *Hague Recueil* (1962, II), 29-30.

<sup>5</sup> Text: 35 *A.J.* (1941), Suppl., p. 191. Adherence by the U.S.S.R. and other states in a Declaration of 1 January 1942: 36 *A.J.* (1942), Suppl., p. 191.

<sup>6</sup> See also Chapters XI (Declaration Regarding Non-Self-Governing Territories) and XII (international trusteeship system), and *supra*, pp. 459-61.

1952<sup>1</sup> the General Assembly recommended, *inter alia*, that 'the States Members of the United Nations shall uphold the principle of self-determination of all peoples and nations'. Most important is the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly in 1960<sup>2</sup> and referred to in a series of resolutions concerning specific territories since then.<sup>3</sup> The Declaration regards the principle of self-determination as a part of the obligations stemming from the Charter, and is not a 'recommendation', but is in the form of an authoritative interpretation of the Charter.<sup>4</sup> The principle has been incorporated in a number of international instruments.<sup>5</sup> However, a number of governments continue to deny that it exists as a legal principle.<sup>6</sup>

The present position is that self-determination is a legal principle, and that United Nations organs do not permit Article 2, paragraph 7, to impede discussion and decision when the principle is in issue.<sup>7</sup> Its precise ramifications in other contexts are not yet worked out, and it is difficult to do justice to the problems in a small compass. The subject has three aspects. First, the principle informs and complements other general principles of international law,<sup>8</sup> viz., of state sovereignty, the equality of states, and the equality of peoples within a state. Thus self-determination is employed in conjunction with the principle of

<sup>1</sup> See Sohn, *Cases and Materials on United Nations Law*, p. 805. The Commission on Human Rights and the Third Committee have been concerned with the subject, and it appears in the draft Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, *supra*, p. 464. The principle was invoked during discussion by the General Assembly, *inter alia*, of the Algerian, Tunisian, and Cyprus cases: Sohn, pp. 420 seq., 812 seq.; and Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations*, pp. 90-106.

<sup>2</sup> Resol. 1514 (XV). See also Resol. 1314 (XIII).

<sup>3</sup> The G.A. established a Special Committee to implement the Declaration. See the resols. on implementation of the Decl. in *U.K. Contemp. Practice* (1962, II), 280-2, 287; *ibid.* (1963, II), 216-20; *U.N. Monthly Chronicle*, June 1965 pp. 55 seq., July 1965, p. 47.

<sup>4</sup> See Waldock, 106 *Hague Recueil* (1962, II), 33; Annual Report of the Secretary-General (1961), p. 2. Cf. Judge Moreno Quintana, I.C.J. Reports (1960), pp. 95-96.

<sup>5</sup> The Pacific Charter, 8 September 1954, *Dept. of St. Bull.* 31 (1954), 393; Communiqué of the Bandung Conference, 24 April 1955, *Annuaire français* (1955), p. 723; Decl. of the Belgrade Conference of Non-Aligned Countries, 6 September 1961 (25 states); Decl. of the Cairo Conference of Non-Aligned Countries, October 1964 (47 states), 4 *Indian Journ.* (1964), 599. See also U.N. General Assembly Resol. 1815 (XVII): *U.K. Contemp. Practice* (1962, II), 290; and Resol. 1966 (XVIII), *ibid.* (1963, II), 225.

<sup>6</sup> For recent statements of the British view: *U.K. Contemp. Practice* (1963, II), 83; *ibid.* (1964, I), 11. Reference to Japanese opinion: Gess, 13 *I.C.L.Q.* (1964), 414.

<sup>7</sup> On domestic jurisdiction: *supra*, pp. 254 seq. On the practice of U.N. organs in the present connexion see Higgins, *loc. cit.*

<sup>8</sup> On these general principles *supra*, pp. 15-16. On the relation of self-determination to *jus cogens* see *supra*, p. 417.

non-intervention in relation to the use of force and otherwise.<sup>1</sup> Secondly, the concept of self-determination has been applied in the different context of economic self-determination.<sup>2</sup> Lastly, the principle appears to have corollaries which may include the following: (1) if force be used to seize territory and the object is the implementation of the principle, then title may accrue by general acquiescence and recognition more readily than in other cases of unlawful seizure of territory;<sup>3</sup> (2) the principle may compensate for a partial lack of certain *desiderata* in the fields of statehood and recognition;<sup>4</sup> (3) intervention against a liberation movement may be unlawful and assistance to the movement may be lawful; (4) territory inhabited by peoples not organized as a state cannot be regarded as *terra nullius* susceptible to appropriation by individual states in case of abandonment by the existing sovereign.

### 10. *Evaluation and Synthesis*

The foregoing discussion reveals the diversity of the relations the individual has in international legal experience. It is clear that legal developments have done much that is constructive, but it is equally clear that political conditions determine the extent and permanence of the progress made in terms of legal obligations and institutions. In closing, three points may be made to place the problem of the individual in international relations in perspective. Theoretical controversy as to whether the individual is a subject of the law is not always very fruitful in practical terms, and the issue is always viewed with the idea of proving that he is a subject *vel non*. He probably is in *particular contexts*, although some would say that this is true only when he has true procedural capacity. The second point is that the individual must be seen in the context of the organized community in which he lives, and, therefore, his individual condition will depend on general social and economic advancement in that community. Some very difficult issues at once arise which are not solved by general formulas of the conventional kind about human rights. A government may desire to control the economy of the state and to

<sup>1</sup> Cp. the ~~Puerto~~ <sup>Punta</sup> del Este Declaration, 56 *A.J.* (1962), 601, 607; and the U.N. General Assembly resols. on the Hungarian situation in 1956 (see Higgins, *op. cit.*, pp. 184-5, 211).

<sup>2</sup> See the Declaration on Permanent Sovereignty over Natural Resources, *supra*, p. 439, and Article 1 common to the draft Covenants produced by the Third Committee of the General Assembly, *supra*, p. 464.

<sup>3</sup> See further *supra*, p. 150.

<sup>4</sup> See *supra*, Chaps. IV and V and, on *locus standi*, pp. 386-90.



## **ANNEX 110**

GG Fitzmaurice, "The Future of Public International Law", *Livre du Centenaire 1873-1973, Institut de droit international* (extract)

Gerald Fitzmaurice, The Future of Public International Law and of the International Legal System in the Circumstances of Today, in INSTITUT DE DROIT INTERNATIONAL, LIVRE DU CENTENAIRE 1873-1973: EVOLUTION ET PERSPECTIVES DU DROIT INTERNATIONAL (1973)

Institut de Droit International

# Livre du Centenaire 1873-1973

Evolution et perspectives du  
droit international

Editions S. Karger S.A., Bâle, 1973

retaliatory action on the part of the countries whose interests, or the interests of whose nationals, are affected, is greeted with charges of "imperialism", "fascism" or "neo-colonialism". In general, almost anything is forgiven to a country that can plead some "anti-colonial" reason for its actions, or can find a pretext for them by pleading the so-called "legacy of colonialism", or by representing itself as "under-developed". Yet as has been justly observed, "What is not true is that basic principles of political behaviour should be varied according to the continent in which you happen to find yourself"<sup>83</sup>. This goes also for juridical behaviour;—for it is not too much to say that whole fields of the law are being disrupted by this attitude. It creeps also into the administration of justice<sup>84</sup>: so much so that certain countries cannot now afford to take a case, or agree to go, to arbitration or judicial settlement, without considering very carefully in advance whether it involves some element of this kind that could affect the minds of the arbitrators or judges irrespective of the legal merits of the dispute,—indeed such countries may be up against something worse—a demand or at least expectation that if the law should be on their side it ought to be changed, and therefore interpreted or applied by the tribunal accordingly, in order to promote such a change—a totally unjudicial process.

(iii) The "double standard" and the notion of the self-determination of peoples

42. The phenomenon of the double standard manifests itself not only in discrimination between States in regard to "like cases", and in failure to make the necessary distinctions where cases are unlike, but also in the advocacy and utilization of inherently conflicting and incompatible legal principles, upholding sometimes the one, sometimes the other, not according to the legal merits of the issue, but to serve purely political ends varying with the circumstances. Several instances could be given, but by far the most striking is to be found in the field of the so-called right of self-determination. This supposed right must

<sup>83</sup> Article entitled "Speak now" in the *London Economist* for 26 August 1972, at p. 15.

<sup>84</sup> An example which would be ludicrous if it were not almost tragic, is afforded by the suggestion made by no less a person (*O tempora, O mores!*) than a judge of the International Court of Justice in the recent Fisheries Jurisdiction case (*I.C.J. Reports 1973*, at p. 46) that the mere fact of making an application to the Court, under an adjudication clause, may be improper or oppressive. According to this doctrine therefore, States may not seek to uphold what they believe to be their rights at all, even by recourse to law. This quite inadmissible notion is a strange one to come from such a quarter.

to some extent be distinguished from the *principle* of self-determination; and the following remarks are not intended to denote any basic lack of sympathy with the principle itself, *politically* considered, but merely to point out its implications in the present (legal) connexion.

43. We shall nevertheless relegate to a footnote<sup>85</sup> the expression of our belief that, juridically, the notion of a legal "right" of self-determination is nonsense—(for can an *ex hypothesi*—as yet juridically non-existent entity be the possessor of a legal right?)—whatever political significance this notion may have; and we shall take as the point of departure the formulation given to both the principle and the right by the United Nations General Assembly in 1970<sup>86</sup>, which simply assumes their existence, at least as a political matter, in the following terms:

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine without external interference their political status and to pursue their economic, social and cultural development; and every State has the duty to respect this right in accordance with the provisions of the Charter."

The first paradox here is that we have in this provision a recognition of the principle of "equal rights",—and if this applies for "peoples", then surely *a fortiori* for States (for otherwise where is the principle of the sovereign equality of States—or are some States "more equal than others"?). But, as we have seen, in practice this right is constantly ignored in many fields,—another instance of the double standard: there is to be equality for purposes of self-determination but not necessarily for other purposes. Moreover the notion of self-determination is itself

85 The initial difficulty is that it is scarcely possible to refer to an entity as an entity unless it already is one, so that it makes little juridical sense to speak of a claim to *become* one, for in whom or what would the claim reside? By definition, "entities" seeking self-determination are not yet determined internationally, or the case would not arise. Can they therefore possess "rights" under international law, and in what way juridically, could the corresponding obligations be postulated? Alternatively, if they do possess such rights, they are entities which are already determined internationally, and the case has passed beyond, and is no longer on, the self-determination plane. The logical impasse involved can really only be avoided by assuming the existence of something to which international law is still a stranger, namely rights residing not in particular entities, but in the international community at large, and obligations correspondingly owed to the community that could be made the subject of a sort of *actio popularis* on the part of any State acting on the community's behalf. Since however there scarcely exists any State which, on account of its minorities, would not itself be vulnerable, there is no chance at present of such an idea finding acceptance in this particular context.

86 Official Records of the General Assembly, 25th Session, Supplement No. 18 (A/8018).

applied in a contradictory and discriminatory way, for it is held not to include any right of "secession" from an already self-determined State<sup>87</sup>, although clearly, and as a matter of reason, it is hardly possible to imagine any case of self-determination that does not involve some process of secession. This second, and still more glaring, paradox and contradiction arises quite obviously in connexion with the last two paragraphs of the Assembly resolution in question:

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights or self-determination of peoples as described above, and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."

It is hardly necessary to point out the extreme circularity and latent discriminatoriness of the first of these paragraphs, and the virtual impossibility of applying it, since it assumes the existence of the very circumstances that would be in issue if a concrete case arose, and hardly contains a word or a phrase that could not plausibly be given more than one meaning. The real point is, however, that these two paragraphs, and particularly the second one, are in almost total contradiction with the rest of the resolution,—for unless the latter is in fact, actually or potentially, "aimed at the partial or total disruption of the national unity and territorial integrity" of some country, it can serve little purpose, and constitutes a mere pious expression of hope or aspiration. Actually, it is quite evidently aimed at one particular type of case, and that only,—a conclusion neatly stated in the following passage from a recent article on the subject<sup>88</sup>:

"If the right of secession is eliminated and the maintenance of the territorial integrity of States takes priority over the claims of 'peoples' to establish their own

87. See Friedmann in Hague *Recueil* (*op. cit.* in n. 34 above) at p. 187, where he says that "... the new States have been adamant in their refusal to recognize a right of secession" and gives a number of examples. See also the late Secretary-General of the United Nations, U. Thant, speaking of the case of Katanga and the Congo: "... as far as the question of secession of a particular section of a Member State is concerned, the United Nations ... has never accepted ... and I do not believe ... will ever accept the principle of secession of a part of [a] Member State" (*United Nations Monthly Chronicle* 36, February 1970).

88. A. Emerson on "Self-Determination", in the *American Journal of International Law* for July 1971 (Vol. 65, No. 3) at p. 465. In addition to the cases mentioned by Friedmann (*supra*, n. 87), he gives (pp. 463 and 464) further examples of recently unaccepted attempts at secession.

separate political identity, the room left for self-determination in the sense of attainment of independent statehood is very slight, *with the great current exception of decolonization*"—(our italics).

In short, secession by a "colonial" or dependent territory is admissible, but secession *from* that territory itself, once independent, is not admissible even on the part of an unquestionably distinct racial, cultural or linguistic component of it<sup>89</sup>. In consequence, juridically, neither the so-called right of self-determination as proclaimed in the United Nations, nor the provisions of the resolution proclaiming it, can (politics apart) be taken seriously, for the notions involved are clearly intended to be capable of use either in support of disruptive action where the general political view is in favour of some particular "liberation" or independence movement, or else against it where the movement does not find such favour. Juridically this is an absurdity.

#### (iv) Other applications of the "double standard"

44. Nor are even these the only contradictions involved, for in many concrete instance—of which some are of quite recent occurrence—action supposedly justifiable under those parts of the United Nations resolution that militate in favour of self-determination would be extremely difficult to reconcile with the notion—to which no less importance is professedly attached—of the non-recognition of situations brought about by the use of force where a "freedom movement" has received outside support. Here we may recall what was said earlier herein under the rubric of intervention and non-intervention (paragraphs 26 and 27). Again, a complete ambivalence of approach is apparent,—to be resolved in each particular case by reference to purely political, not legal criteria,—yet another example of indifference to legal considerations. The same applies to the principle of the outlawry of genocide or near-genocide, and the prohibition of acts in the nature of genocide. This is viewed quite differently according to the political context and the geographical setting involved. Of this, and all the other cases we have instanced, and many we have not, it is true to say that what occurs is "an open assertion of the priority of national political interest over the restraints of international law"<sup>90</sup>.

89 The reason is evident enough: there is hardly any new State—or for that matter older one—that does not comprise within its borders racial, cultural or linguistic minorities whose secession would bring about a "partial or total disruption of the national unity and territorial integrity" of the State concerned.

90 Friedmann, *op. cit.* in n: 34 above, p. 187.

## **ANNEX 111**

General Assembly First Committee debates on Cyprus 1958: 996<sup>th</sup> Meeting, Tuesday, 25 November 1958, 10:40 am (A/C.1/SR.996) and 1003<sup>rd</sup> Meeting, Monday, 1 December 1958, 3:15 p.m. (A/C.1/SR.1003)

United Nations  
**GENERAL  
ASSEMBLY**

THIRTEENTH SESSION  
Official Records



**FIRST COMMITTEE 996th  
MEETING**

Tuesday, 25 November 1958,  
at 10.40 a.m.

**NEW YORK**

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**Chairman: Mr. Miguel Rafael URQUIA (El Salvador).**

**Nuclear tests on the high seas: resolution adopted on 23 April 1958 by the United Nations Conference on the Law of the Sea**

1. The CHAIRMAN said that the Committee had been instructed to study a resolution by the United Nations Conference on the Law of the Sea with regard to nuclear tests on the high seas.<sup>1/</sup>
2. In view of the fact that the Committee and the General Assembly had both completed their consideration of the items on disarmament and the discontinuance of atomic and hydrogen weapons tests, he proposed that the Committee decide to have the above-mentioned resolution distributed as a document of the Disarmament Commission when it met in 1959.

It was so decided.

**AGENDA ITEM 68**

**Question of Cyprus (A/3874 and Add.1, A/C.1/811, A/C.1/L.221-223)**

**GENERAL DEBATE**

3. Mr. AVEROFF-TOSSIZZA (Greece) said that the situation in Cyprus was such that it was no longer simply a question of the future of the population of the island, but of a direct threat to peace and security in the Eastern Mediterranean area. Indeed, the Government of the United Kingdom was turning the Cyprus question into a power conflict and an object of territorial claims and expansionist ambitions liable to cause the illegal overthrow of the status established by treaty and to compromise stability and peace in an area that was one of the nerve-centres of the world.
4. He recalled the previous debates on the question of Cyprus in the General Assembly and the events which had occurred in the island up to the beginning of 1958. He pointed out that Cypriot resistance had ceased on the day when the General Assembly had adopted resolution 1013 (XI) and had only been resumed because the British authorities had not observed the truce, which had, however, been respected by the patriots of the island, and because the British authorities had once more attempted to impose on the Cypriots a plan which

<sup>1/</sup> Official Records of the United Nations Conference on the Law of the Sea, Volume II: Plenary Meetings (United Nations publication, Sales No.: 58.V.4, Vol.II.), p.143.

was against their interests and had been made without their participation. It was for that reason that blood was again flowing in Cyprus, making new victims every day; such was the tragic price of a misguided policy. The tide of history could not be stemmed and any attempt to prolong British domination over Cyprus against the will of the Cypriots was by its very nature condemned to failure from the outset.

5. The territorial claims of the Turkish Government were for their part no more than the manifestation of expansionist ambitions which were as unjustifiable as they were provocative. In fact it was as a means to prolong its domination over the island in flagrant disregard of Article 1, paragraph 2, and Article 73 of the Charter of the United Nations that the United Kingdom had first invented the Turkish factor and then the tripartite formula. The Government in Ankara had then made certain claims and demands, thus using the Turkish minority as an instrument of territorial aggrandizement. The truth was, however, that Turkey had absolutely no right over Cyprus. Not only had it renounced its claim to any right or title over Cyprus under the Treaty of Lausanne<sup>2/</sup> as also to any power or jurisdiction over the nationals of territories situated outside its frontiers, but also—a more grave consideration—its present claim to annex a part of the island constituted a violation of the Charter and of the established rules of international law. The British Government and the Turkish Government were both forgetting that there could no longer be any question of determining the future of a territory without taking account of the wishes of the population.

6. The Turkish Government claimed that the Turkish minority was not a minority, but a community, a people, and therefore by its very nature, a majority. That theory had naturally been invented to fit the case. There remained, however, the question, first, of explaining why the Turkish minority should be an exception to the idea of a minority and, secondly, of determining whether a minority could legitimately claim the right of self-determination, the right to separate itself from the national organism and to invite a neighbouring Power to annex a part of its territory in its name. A further outstanding question was the circumstances in which such an operation was feasible. That was a question of principle of extreme importance, the consequences of which must be carefully weighed.

7. In defence of the thesis of partition, the Turkish Minister of Foreign Affairs had claimed that all Cypriots whether of Greek or Turkish blood were anxious to unite with their respective countries. However, whether their origins were Greek or Turkish, the islanders were in the first place Cypriots and the island was a single territorial unit. The right of self-determination which the Charter granted to the populations

<sup>2/</sup> Treaty of Peace signed at Lausanne on 24 July 1923. League of Nations, Treaty Series, vol. XXVIII, 1924, No.701.



of Non-Self-Governing Territories had always been exercised by the whole body of a population living in a given territory and could be exercised in no other way. Minorities enjoyed that right as elements in the population and not as minorities *per se*. Furthermore, it might well be asked what the representative of Turkey meant when he stressed that in Cyprus the Greeks were Greek and the Turks were Turkish, since ethnic minorities were by definition ethnically different from the majority of the population. All such reasoning was entirely groundless and was contrary to the established rules of international law, to the Charter, to international practice and to the practice of the United Nations regarding Non-Self-Governing Territories. In Togoland, for example, the United Nations had not given consideration to the wishes of a province which represented a minority in relation to the population as a whole, although it might if necessary have considered it as a unit. In Cyprus, however, the Turkish minority was spread throughout the whole of the population.

8. It was absolutely clear that the Turkish minority had its own rights, upon which one could encroach and which none could fail to recognize. Any really constructive policy, however, should be aimed at establishing the sincere and trusting participation of the Turkish minority in the government of the island. The Turkish element had always co-operated with the rest of the population in times of servitude and it could well do so in times of freedom if the Government in Ankara ceased to use the Turks of Cyprus as a means for dividing the island. The Turkish Government claimed that its aim was not to leave the Turks of Cyprus under foreign domination. It was, however, Turkey itself—and of its own free will—which had placed the Turks of Cyprus under British colonial domination both in 1878 and in 1923. If, therefore, the Turkish Government maintained that it did not consent to the domination of the Turkish minority by the majority, that was to say the least, a strange theory which would be equivalent to considering life in common as a form of domination and to maintaining that, to prevent the limbs being dominated by the body, the limbs should be amputated. It could easily be imagined what would happen to the world if minorities which were to be found almost everywhere were to adopt such a theory. In reality, what the Turkish Government sought was not the partition of Cyprus between the Greek majority and the Turkish minority—which would also be inconceivable—but indeed the partition of the island between Greece and Turkey, that is to say, the extension of Turkish sovereignty and the occupation of a part of the territory of Cyprus. Greece, on the other hand, requested no territorial expansion over Cyprus.

9. The United Kingdom Government, like the Turkish Government, was endeavouring to bring about partition. That was the reason why it had conceived the Macmillan plan of 19 June 1958<sup>3/</sup> which was based on the assumption that an intermediate period was indispensable. The Greek Government and Archbishop Makarios had no objections to a temporary régime, provided that it did not prejudice the future and guaranteed genuine and democratic self-government.

10. The proposed plan proved that great weakness had been shown in dealing with Turkey. A few weeks before its publication, the Turkish Government had exercised

<sup>3/</sup> Cyprus: statement of Policy (London, Her Majesty's Stationery Office, June 1958, Cmnd.455.

very strong pressure in London, Athens and Cyprus in order to impose its thesis, namely, partition. First, there had been threats of direct military intervention from various Turkish officials. Next, a campaign of violence had been conducted in Cyprus by the Turkish minority against the Greek population; several Greek buildings had been looted and burned, and many Greek Cypriots had been wounded and even killed. Finally, demonstrations in favour of partition had taken place in several towns in Turkey and that campaign had received the total support of the Turkish Press.

11. The Greek Government, for its part, had forbidden any demonstration, despite popular pressure, but had felt bound to draw the Security Council's attention, in a letter dated 13 June 1958 (S/4025), to the dangers threatening the peace of the world.

12. London, then, had adopted the Turkish thesis, but had camouflaged it under the Macmillan plan. As Professor Bourquin had stated in a legal opinion<sup>4/</sup> the interim régime envisaged in the plan would inevitably direct the political and administrative system of Cyprus towards partition, even before the people had been asked to decide upon their future status. In Great Britain, people had asked themselves what that plan meant. Some had thought that it derived from a secret agreement between Turkey and the United Kingdom concerning the Middle East, and there had been talk of oil. Others had thought that it was an example of the traditional British policy of "divide and rule".

13. What, then, was the Macmillan plan? Cyprus would remain a colony for a period of seven years, after which it was hoped to set up a condominium of three. The members of each community would be able to acquire Greek or Turkish nationality, while preserving their British nationality. Two houses of representatives would be established, one for the Greek community, the other for the Turkish community. The Greek Government and the Turkish Government would each be invited to appoint a representative to assist the Governor. Those representatives would be members of the council responsible for the internal administration of Cyprus. That council would also be composed of four Greek Cypriot representatives and two Turkish Cypriot representatives. It would be presided over by the Governor.

14. The strange feature of that system was that it gave to a minority of 17 per cent the right to have a house of representatives. Moreover, the United Kingdom Government was inviting two Governments to share in a function which it exercised but which, both in law and morality, belonged to the people of Cyprus alone. That was not all. The appointment of a representative of the Turkish Government with authority to play a direct or an indirect part in the administration of the island would constitute a flagrant violation of article 27 of the Treaty of Lausanne, the terms of which had been chosen with the greatest care and left no room for doubt. The Greek Government, and Archbishop Makarios on behalf of the Cypriot people, could not but reject that plan.

15. After the Greek Prime Minister had informed him of the points of the plan which prejudged the future of the island, Mr. Macmillan, United Kingdom Prime Minister, had let it be known that a new meeting of the two Prime Ministers would take place after his visit to

<sup>4/</sup> Subsequently distributed as document A/C.1/814.

Ankara. However, he had decided that any new contact with the Greek Government would be superfluous and had declared that the plan would be carried into effect. The plan had admittedly been slightly changed: the provision regarding double nationality had been eliminated, a vague provision had been included for a common house of representatives in the future, the representatives of the two Governments would no longer be members of the Council and the Governor would be authorized to create separate municipalities in places where he might deem it appropriate.

16. On 1 October, the Turkish Government had appointed its representative. The plan had thus been set in motion, against the will of the population. That had led to renewed bloodshed in Cyprus. When the leaders of the Turkish minority had asked the Governor to establish separate municipalities, their request had been received with sympathy. Never had the "divide-and-rule" principle given rise to such an absurdity: two municipal authorities in a single community had been entrusted with the task of providing indivisible services, such as the distribution of water, the lighting of streets and the like.

17. Seeking a solution acceptable to all, Mr. Paul-Henri Spaak, Secretary-General of the North Atlantic Treaty Organization (NATO), had proposed some modifications to the British plan: the establishment of a single representative body with competence over the internal affairs of Cyprus, the replacement of the representatives of the Greek and Turkish Governments by the presidents of the two communal houses of representatives and the establishment of an interim régime which would not prejudice the future status of the island.

18. Greece had accepted those proposals, but the United Kingdom Government and the Turkish Government, for their part, had rejected them and had proposed negotiations. Unfortunately, it had soon become clear that those negotiations would not touch the substance of the question. In refusing to defer the application of the Macmillan plan until agreement had been reached on Mr. Spaak's proposals, the United Kingdom Government had made certain that any conference on the future of Cyprus would be faced with a fait accompli.

19. The intransigence of the London and Ankara Governments was apparent from many statements. For example, the United Kingdom Secretary of State for the Colonies had stated before the Conservative Party that Cyprus was a Turkish "off-shore island" and that Turkish security required that it should be in the hands of the United Kingdom or Turkey. The Turkish Minister of Foreign Affairs, for his part, had declared at Strasbourg and at Ankara that any solution other than partition was out of the question; and that had been confirmed by the President of the Turkish Republic, who had said that the Turkish Government had accepted the Macmillan plan because it could lead to the partition of the island. A conference could thus have served no purpose, as one solution would have been imposed upon the participants.

20. That was the point at which Archbishop Makarios had taken the initiative and proposed a compromise solution: the independence of Cyprus, after a period of genuine and democratic self-government. Greece which, regardless of what might be said, had never cherished expansionist designs—had declared itself in agreement with Archbishop Makarios, as it had no desire to restrict the right of the Cypriot people to

self-determination, a right recognized by the United Nations Charter.

21. The idea of independence had originally been put forward by the representative of India, Mr. Krishna Menon. An independent Cyprus could play a beneficial role in the Eastern Mediterranean. It would naturally wish to maintain friendly relations with Greece, Turkey, the Arab world and the British Commonwealth, of which it could eventually become a member.

22. Those were the considerations which had prompted the draft resolution submitted by the Greek delegation (A/C.1/L.222). The proposals contained therein could be summed up under three essential headings: recognition of the Cypriot people's right to independence at the end of a period of genuine and democratic self-government; recognition of the rights of the Turkish minority and genuine safeguards for their exercise; and the establishment of a good offices committee designed to give practical effect to the interest of the General Assembly in the Cypriot people and to promote the necessary co-operation among all the parties concerned. That committee would submit a report to the General Assembly, which would thus be kept informed of the efforts made to solve the problem.

23. In adopting the Greek draft resolution, the General Assembly would finally pave the way for the efforts necessary to reach a settlement of the question in that atmosphere of confidence which did not yet exist. The question of Cyprus could only be solved if it were considered by itself, independently of the political conflicts centered upon the island. It was high time to leave Cyprus to the Cypriots.

24. The United Kingdom draft resolution (A/C.1/L.221) could be summarized as follows: the General Assembly blamed the Cypriots for their resistance to the colonialist forces; it congratulated the United Kingdom Government for the excellent manner in which it had dealt with the Cyprus affair; and it requested that Government to continue along the same path.

25. There would doubtless also be talk of a conference and of negotiations. But that was a manoeuvre designed to block General Assembly action, so as to permit the United Kingdom administration to apply its partition plan with the co-operation of the Turkish Government. The United Kingdom Government had itself destroyed the legend of a tripartite agreement: it was carrying into effect its plan for co-operation between three parties despite the vehement protests of one of them. Neither Greece nor the Cypriots would accept the permanent condominium which the United Kingdom Government proposed. They did not believe that the best means of abolishing colonialism was to multiply it by three.

26. Greece had been accused of intransigence. Yet the Greek Government was prepared to discuss the problem with anybody, anywhere, provided it met with good will. In the absence of good will and of confidence, there had to be safeguards; and those had never existed.

27. During the Second World War, Cypriots had fought at the side of the allies. When Europe had been invaded, the United Kingdom had appealed to the people of Cyprus by placing on the island large posters bearing the slogan: "Fight for Greece and Freedom". All the Greeks of Cyprus had enlisted under the British flag and had shed their blood. Having signed that contract with their blood, they refused to forget at least

the clause "Fight for Freedom". The United Nations should not forget that, in the common sacrifice from which the Organization itself had sprung, some Cypriot blood had also been spilled. The United Nations thus had a debt to that people, which was only asking for what was recognized as a right of all the peoples of the globe.

28. Mr. NOBLE (United Kingdom) regretted that the problem of Cyprus should again be before the General Assembly. His delegation had not, however, opposed the inclusion of the question of Cyprus in the General Assembly's agenda because it welcomed the opportunity to explain the policy and present position of the United Kingdom Government.

29. First of all, if the problem were simply a colonial one, the United Kingdom would not have great difficulty in solving it. As its colonial record proved, the United Kingdom's aim had been to advance its dependent territories throughout the world towards self-government and the freedom to decide their own future. As long ago as the nineteenth century, it had transferred the Ionian Islands to Greece.

30. But Cyprus had become an international problem. Besides the two communities in Cyprus, three separate countries were concerned: Greece, because the great majority of the people of the island were Greek in feeling and tradition; Turkey, because of the island's geographical position, its historical connexion with Turkey and the existence of a significant and nationally conscious Turkish minority; and the United Kingdom.

31. The United Kingdom, which was the present sovereign Power, bore the practical and moral responsibility for the welfare of all the island's inhabitants. It was also bound by its international obligations to provide strategic support for two defensive alliances. In the present circumstances, bases in Cyprus were necessary for that purpose, and whatever solution was found to the Cyprus question, the provision of those bases would present no real problem. Greece and Turkey were the friends and allies of the United Kingdom and the strategic needs of the United Kingdom were as much in the interest of the other two countries as in its own.

32. The Greek Minister of Foreign Affairs had just referred to the Treaty of Lausanne, but it was clear from a reading of the Treaty and the minutes of the Lausanne Conference<sup>5/</sup> that articles 16 and 27 were designed only to ensure that Turkey did not claim any residual rights arising from its former sovereignty over the territories it had ceded under the Treaty. Those articles had been designed to terminate past rights and titles and not to preclude the acquisition of new rights and titles in the future.

33. The measures taken by the United Kingdom Government since 26 February 1957 showed that its policy was in conformity with General Assembly resolution 1013 (XI), on which it had been based.

34. Shortly after February 1957, Archbishop Makarios had been released from the detention to which he had condemned himself by activities dangerous to the peace and welfare of the people of Cyprus. All members of

the terrorist organization EOKA (National Organization of Cypriot Fighters) had been offered safe-conduct out of the island. The emergency regulations had been relaxed and the death sentences of many terrorists commuted. Everything had been done to encourage the return of tranquillity to the island.

35. Unfortunately, as the months had passed, it had become clear that the terrorists were not prepared to moderate their extreme demands. In December 1957, with the approach of the United Nations debate on the Cyprus question, strikes and demonstrations had taken place, followed by a precarious peace and then a renewal of EOKA terrorism. Serious violence had broken out between the Turkish and Greek communities in June 1958 and had reached a peak in July.

36. At the beginning of August, in response to appeals from the Prime Ministers of the United Kingdom, Greece and Turkey, that violence had ceased. But the terrorist activities of EOKA had been resumed and were continuing. They were directed not only against members of the Greek community and the security forces but against unarmed British civilians.

37. The United Kingdom had always sought a solution which would enable the inhabitants of Cyprus to live once again in peace and freedom from intimidation. In March 1957, it had accepted without qualification the offer of good offices made by the Secretary-General of NATO, but that initiative had foundered on the opposition of the Greek Government.

38. The United Kingdom Government had then begun a series of informal exchanges with the Greek and Turkish Governments with a view to holding a conference. That initiative had also come to nothing, through no fault of the United Kingdom.

39. At the Twelfth session, the Cyprus question had once again been debated at the United Nations. During that discussion, he had assured the Assembly that confidential exchanges between the three Governments directly concerned were still continuing and had urged it to take no decision which might frustrate those exchanges or make a compromise more difficult.

40. At the beginning of 1958, the Secretary of State for Foreign Affairs of the United Kingdom had himself visited Ankara in January and Athens in February to discuss in detail with the Turkish and Greek Governments every aspect of the problem. Following those talks and after a careful study of the problem, the United Kingdom Government had formulated a completely new policy for Cyprus, which the Prime Minister had announced to Parliament on 19 June.

41. Noting that prolonged discussion and negotiations between the Greek and Turkish Governments and the two Cypriot communities had failed to provide a basis for an immediate and permanent settlement of the situation, the United Kingdom Government had considered it necessary to think in terms of an interim solution by which peace could be restored and political progress made without requiring any of the parties to abandon their long-term aspirations.

42. The dominant principle of the United Kingdom's policy was that of partnership between the two Cypriot communities and the Governments of the United Kingdom, Greece and Turkey. That idea of partnership had proved its worth in the development of the British Commonwealth. The United Kingdom's new policy,

<sup>5/</sup> Conference on Near Eastern Affairs, held at Lausanne from 21 November 1922 to 4 February 1923. See Lausanne Conference on Near Eastern Affairs, 1922-1923, Records of Proceedings and Draft Terms of Peace (London, His Majesty's Stationery Office, 1923), Cmnd. 1814.

based on that idea of partnership, invited the co-operation of the Greek and Turkish Governments in a joint effort to ensure the peace, progress and prosperity of the island. A representative of each of the two Governments would co-operate with the Governor. The Cypriots would have a liberal constitution giving them self-government, with a separate house of representatives for each of the two communities. Each house would have final legislative authority in its own communal affairs. Internal administration other than communal affairs and internal security would be managed by a single council presided over by the Governor. That council would include six elected ministers, four of whom would be Greek Cypriots and two, Turkish Cypriots. The representatives of the Greek Government and the Turkish Government would have the right to require that any legislation they considered discriminatory should be submitted for consideration to an impartial tribunal.

43. In order to allow time for the new principle of partnership to be worked out and brought into operation in the necessary atmosphere of peace and stability, the international status of the island was to remain unchanged for seven years. Its external affairs, defence and internal security would during that time be reserved to the Governor, acting after consultation with the representatives of the Greek Government and the Turkish Government.

44. The essence of the policy was to leave the future of the island, after the expiration of the seven-year period, completely open and unprejudiced. At that time, it would be open to any of the parties to put forward any proposals they wished for the island's ultimate status. Those proposals would be freely discussed in what it was hoped would be a new atmosphere of calm and confidence. At that time, sacrifices of principle on all sides would no doubt be necessary. The United Kingdom for its part would be ready to share the sovereignty of the island with its Greek and Turkish allies. That was only one suggestion, but it should indicate that the United Kingdom would not make the retention of its sovereignty in Cyprus an obstacle to an eventual settlement. In the meantime—that is, during the seven-year period—the United Kingdom's policy would consist of a series of steps to be put into effect progressively with provision for discussion and consultation at each stage.

45. His Government hoped that the General Assembly would recognize the sincerity of its efforts and that all concerned would co-operate in establishing and preserving a peaceful atmosphere in the island.

46. In June 1958, shortly before the official announcement of the new policy, his Government had made its details known to the members of the North Atlantic Council. The twelve countries not directly concerned in the problem, and the Secretary-General of NATO himself, had welcomed it as a constructive move to break the present deadlock.

47. In August, after violence had ceased on Cyprus, the United Kingdom Prime Minister had proposed an immediate meeting with the Prime Ministers of Greece and Turkey to discuss and exchange views on the new policy. Upon their acceptance of his proposal, Mr. Macmillan had at once gone to Athens and then to Ankara. Following his return to London on 15 August, he had made a statement on the manner in which the new policy was to be gradually applied; first, however,

he had made certain modifications in the manner of its application in an effort to meet the wishes of the Greek Government and the Turkish Government.

48. One such modification had concerned the status of the representatives of the Greek and Turkish Governments, who, under the original plan, would have sat as members of the Governor's council. In order to meet certain objections regarding the desirability of their participation in the day-to-day administration of the island, it had been decided that they would not in practice be members of the council; that would not, however, impair the closeness of their contact with the Governor. Another modification had been intended to make clear the hope and expectation of the United Kingdom Government that a unified assembly, representing the island as a whole, would in due course be established.

49. In spite of those modifications, which had been designed to meet the wishes of the Greek Government, the Turkish Government had announced its acceptance of the new United Kingdom policy and had promised to co-operate in its application. Unfortunately, the Greek Government had felt unable to do the same. The United Kingdom Government deeply regretted that fact. It continued to believe that its policy provided the best hope for a solution and did not despair that the Greek Government would come to believe that also.

50. On 1 October, the Turkish Government had appointed as its representative on Cyprus the Turkish Consul-General at Nicosia, who, since his appointment, had co-operated with the Governor and discussed with him the preparations for the projected elections. The Greek Government was free to appoint its representative whenever it wished.

51. He emphasized that the interim seven-year régime envisaged in the new United Kingdom policy was not designed to go into effect all at once, but by stages. The date of 1 October 1958, which had received great publicity, marked only the beginning of one stage. There was no one vital date after which it would be too late to co-operate with the policy.

52. The Governor's council was of particular importance, for it was to be a body responsible for matters relating to the island as a whole. It would be a unitary body, with a Greek Cypriot majority. It would help to preserve the united personality of Cyprus. It was the hope of the United Kingdom Government that its plan would, with general good will, facilitate the development of some form of representative assembly for the whole island. The two communal assemblies had not been designed to lead to separatism on the island, but in the present state of intercommunal tension and distrust, they represented the one chance of making a start with the establishment of democratic machinery.

53. In theory, it might have been preferable to establish a unitary system. Unfortunately, however, Lord Radcliffe's draft constitution,<sup>6/</sup> which had been the last of the United Kingdom Government's repeated efforts in that direction, had been rejected by the Greek Government. That approach was now no longer feasible, particularly in view of the recent outbreaks of open fighting which had occurred between the two communities.

<sup>6/</sup> Lord Radcliffe, *Constitutional Proposals for Cyprus* (London, Her Majesty's Stationery Office, December 1956), Cmnd.42.

54. He emphasized that the United Kingdom Government's action in granting a measure of communal autonomy was in no sense intended to bring about partition of the island, which would bring misery to a large part of the population. The United Kingdom Government had never favoured partition as a solution of the Cyprus problem. It did not favour it now.

55. Turning to the NATO Council's recent discussion of the Cyprus question, he paid a tribute to the efforts which Mr. Spaak, the Secretary-General of NATO, had made to further the talks; it was to be hoped that they would yet bear fruit. During the NATO discussion, the United Kingdom Government had made clear its willingness to attend an international conference on the Cyprus question. The Turkish Government had taken a similar stand. At the last moment, however, the Greek Government had declared its inability to continue the negotiations.

56. The United Kingdom Government had published a White Paper (A/C.1/811) outlining the course which the NATO negotiations had taken. That document showed that the United Kingdom had been most anxious to arrive at an agreement which would enable a conference to be held and had made a number of concessions to that end. His Government was ready to discuss not only its policy, but also possible changes to it. Discussion of a long-term solution was also to have been on the agenda of the proposed conference. No possibilities for a final solution would have been excluded. The United Kingdom had agreed that the conference should be held at Paris under the chairmanship of Mr. Spaak and that it should be attended by representatives of two other Governments which were not directly concerned in the matter and by representatives of the Greek and Turkish Cypriot communities, including Archbishop Makarios, if his attendance was desired.

57. The United Kingdom Government had been most disappointed at the Greek Government's sudden decision to break off negotiations, and hoped it was not final. The United Kingdom Government was always ready to negotiate, but it wished to make it clear that it would not give way to violence or terrorism.

58. Archbishop Makarios had recently stated in New York that the terrorism in Cyprus was the heroic work of patriots. That contention was as shocking to the conscience of the world community as it was cruel to the unfortunate inhabitants of Cyprus. The cowardly murderers in Cyprus were not heroes; they were at best misguided, at worst despicable.

59. Nevertheless, some progress had been made on Cyprus. Inter-communal fighting had ceased, and the drift towards civil war had been halted. Greece and Turkey were no longer pressing quite so urgently the extreme demands which they had made at the twelfth session of the General Assembly. It would be tragic if that progress should be jeopardized by any action of the Assembly.

60. It was in the light of the ground gained that the United Kingdom delegation had submitted a draft resolution (A/C.1/L.221), under which the General Assembly would invite the United Kingdom to continue its efforts to arrive at a solution acceptable to all the parties concerned and in accord with the purposes and principles of the Charter of the United Nations; invite the other parties to co-operate to that end; and call

upon all concerned to use their best endeavours to put an end to terrorism and violence on Cyprus.

61. As for the question of independence for Cyprus, which was advocated by the Greek Minister of Foreign Affairs, the United Kingdom had no objection to the consideration at a conference of all possible long-term solutions, of which independence was naturally one. It would be dangerous, however, for the General Assembly specifically to endorse independence for Cyprus now, even as a long-term solution. Nor would it help, in the present circumstances, to establish a United Nations good offices committee, as suggested in the Greek draft resolution (A/C.1/L.222). Such a committee could only duplicate the work already done by the NATO Council.

62. Independence was a noble principle which had been supported by British policy throughout the world. The complexity of the Cyprus problem was such, however, that no one final solution could command general agreement until a climate of confidence existed between the two Cypriot communities and among the three countries concerned; that confidence did not yet exist and must be gradually built up. Any attempt to endorse a long-term solution in the absence of general agreement could only lead to civil war, or worse. Civil war in turn would point the way to partition in Cyprus and perhaps to international conflict in the Mediterranean. The General Assembly would bear a heavy responsibility if a decision taken by it were to lead to conflict and conflagration.

63. Moreover, the exact nature of the proposal for independence was far from clear. One could well ask how long such independence would last. Cyprus by itself would be terribly exposed to threats of subversion and even to aggression. Furthermore, it was difficult to escape the suspicion that independence might in practice prove to be not a concession involving the abandonment of *enosis* (union with Greece), but rather a covert means of approach to it. Archbishop Makarios' statement in an interview published in *The New York Times* was significant in that connexion.

64. Anticipating the suggestion that the permanence of an independent régime could be guaranteed by an international body such as the United Nations, he warned of the difficulties which such an undertaking would involve and wondered whether the United Nations would be willing to provide a police force to maintain peace on Cyprus—particularly since such a force would have to be kept on the island for a considerable period of time. Would the United Nations be willing to take over the burden of subsidy at present borne by the British taxpayer?

65. It was a mark of wisdom and statesmanship to recognize that there were times when one's dearest ideals and principles could not be applied without causing vast suffering. The Government of the United Kingdom was confident that such wisdom and statesmanship would not be found lacking in the General Assembly.

66. The United Kingdom Government would go ahead with the gradual implementation of its plan; it would remain ready to negotiate in whatever way might seem most useful, and it would hope that in time all concerned would not fail to see and grasp the opportunity which that policy offered.

The meeting rose at 1.35 p.m.

# GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records


 Monday, 1 December 1958,  
at 3.15 p.m.

NEW YORK

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**Chairman: Mr. Miguel Rafael URQUIA (El Salvador).**

## AGENDA ITEM 68

**Question of Cyprus (A/3874 and Add.1, A/C.1/811, A/C.1/814, A/C.1/L.221-223, A/C.1/L.225, A/C.1/L.226, A/C.1/L.228) (continued)**

## GENERAL DEBATE (continued)

1. Mr. COOPER (Liberia) agreed with the United Kingdom representative that the question of Cyprus was not simply a colonial problem, since the island was inhabited by two ethnically different communities which had different languages and religions and constituted two separate social groups. He was certain that the United Kingdom would grant independence to Cyprus, as it had done in many other cases, if it were possible to do so without violence. However, violence had already broken out between the island's two communities despite the presence of the British Army, and one might well ask what would happen if the United Kingdom troops were withdrawn. It was therefore understandable that the United Kingdom felt morally obligated to protect the peoples of the island.

2. It was undeniably true that in any community the will of the majority must prevail. However, the majority must also guarantee the rights of minorities, and, so long as the Turkish minority continued to be subjected to Greek Cypriot excesses, it found it difficult to believe that its rights would be guaranteed. The use of a United Nations police force to guarantee those rights would, of course, present difficult problems. The Greek Cypriots must therefore recognize that, so long as the situation on the island remained tense, it would not be possible for them to obtain independence. Independence could not be granted to them until the present strife had ended and the Cypriots had learned to regard themselves no longer as Greeks or Turks, but as Cypriots. Partition was surely no solution, since even if it should prove feasible—which was unlikely—open hostility between the two communities would result.

3. His delegation would be guided by the foregoing considerations when the various draft resolutions were put to the vote. While he would not hesitate to support any draft resolution calling for the self-determination and independence of a colonial people, he felt that, in the case of Cyprus, immediate self-determination might well add to the difficulties of the island's population. It was most gratifying that the Greek Government no longer insisted on immediate self-deter-

mination for the Cypriots and that, at the same time, the United Kingdom delegation did not rule out the possibility of granting it to them at a later date if they desired it.

4. Mr. DE LEQUERICA (Spain), after briefly reviewing the major events in the history of Cyprus, said that Turkey was taking an extreme position in arguing that the two Cypriot communities must play separate parts in determining the island's future. The Committee should give careful study to the thesis advanced by the United Kingdom, which had stated that it did not favour partition and deemed it more advisable to accustom the Cypriot people to a common existence by establishing temporary institutions which could be modified at any time.

5. He also found most interesting the statement by the United Kingdom representative that his country would not make the retention of its present sovereignty over Cyprus an obstacle to an eventual settlement (996th meeting). The efforts to find a solution to the problem were worth continuing. If the attempt was to succeed, however, confidence must be restored. In his delegation's opinion, the apprehensions expressed concerning enosis (Union with Greece) were exaggerated. On the other hand, if the Cyprus question was to be settled, it was essential to guarantee the rights of the Turkish minority—an objective which was furthered by the presence on the island of a third party. Moreover, Turkey's concern over the geographical proximity of Cyprus would become less acute once all parties concerned agreed to the maintenance of the United Kingdom military bases on the island for the common defence. At the same time, while it condemned the terrorism on Cyprus, his delegation felt that the suppression of terrorism should not be made a precondition for negotiation and agreement.

6. He thought that considerable progress had been made, if not towards a solution of the Cyprus question, then at least towards clarifying it. That was evident from the draft resolutions submitted by the three parties concerned (A/C.1/L.221-223), and particularly from the special importance which had been given, by comparison with the previous year, to the principle of self-determination. In that connexion, his delegation agreed with the view expressed by Mr. Drago, the Argentine representative at the twelfth session (921st meeting) regarding the interpretation of Article 1 of the Charter of the United Nations; none of the Charter provisions could be construed as inciting the non-self-governing peoples to rebellion. On the other hand, the first three draft resolutions, although they had some excellent passages, were incomplete and did not seem truly calculated to produce effective results. They served to divert the United Nations from the essence of the problem. The Colombian draft resolution (A/C.1/L.225) contained some very useful paragraphs, however, although his delegation was not very

favourably disposed to the idea of setting up a good offices committee. He had also been impressed by the proposal submitted at the previous meeting by the Iranian representative, which he had not yet had time to study, and hoped that the appropriate terms would be found to define the role which the United Nations should play in the matter under discussion.

7. The various proposals provided sufficient common ground for drafting a single resolution in more specific and precise terms, which would draw attention to the progress already achieved and would point out, in statesmanlike fashion, the objectives to be attained.

8. Mr. KURKA (Czechoslovakia) said that the United Nations responsibilities in the Cyprus question had increased as a result of the failure of all attempts to resolve the problem outside the United Nations.

9. Far from meeting the aspirations of the Cypriot people, the United Kingdom Government was trying to impose solutions on the Cypriots which completely disregarded their wishes; an example was the Macmillan plan,<sup>1/</sup> which could only lead to partition of the island and continued United Kingdom rule.

10. The strife between the Greek and Turkish Cypriots was a problem that had been artificially created in order to conceal the real cause of the tension, which was of a military and strategic character. Cyprus was the United Kingdom's principal Mediterranean base and was used to carry out a foreign policy which was governed primarily by the interests of the oil monopolies. In 1956 and 1958, it had served as a jumping-off point for aggression against the Arab peoples. It was useless for the United Kingdom representative to argue that his Government's partners in the North Atlantic Treaty Organization (NATO) and the Baghdad Pact had given their consent to the establishment of the Cyprus base, for the consent of its allies did not justify the United Kingdom's occupation of the island. The only consideration should be the wishes of the people, and the Cypriots had clearly shown that they were opposed to transforming their territory into a military base. The presence of the United Kingdom troops on Cyprus was a threat to international peace and security.

11. The attitude displayed by the United Kingdom authorities and the repressive measures to which they had resorted could only enlist the sympathy of all the world's peace-loving peoples for the Cypriot people. Repression could not solve the problem. The only possible solution was to give the Cypriots the opportunity to determine their own future. If all the parties concerned made an honest attempt to resolve the dispute, a peaceful solution would surely be found.

12. The General Assembly must draw the proper conclusions from the experience of past years and from the course of events since the twelfth session and must take a clear stand in favour of permitting the Cypriot people to exercise its right to self-determination.

13. Mr. ORTIZ MARTIN (Costa Rica) recalled that, in addition to the United Kingdom, Greece and Turkey, there was a fourth party involved in the Cyprus question: the Cypriot people. The solution of the problem should be a political and not a territorial one. There-

<sup>1/</sup> Cyprus: Statement of Policy (London, Her Majesty's Stationery Office, June 1958), Cmnd. 455.

fore, the Colombian draft resolution (A/C.1/L.225) was the most appropriate one for the situation.

14. However, in operative paragraph 2 of the text, the word "Suggests" should be substituted for the word "Decides", as the United Kingdom exercised sovereignty over the island and it alone could authorize an observation group to go there.

15. Mr. MEZINCESCU (Romania) referred to the statement made by his Government on 11 October 1958, in which it had expressed its profound sympathy for the people of Cyprus, the last European people to be subjected to a colonial régime and to be denied the exercise of its legitimate right to live in accordance with its aspirations and interests.

16. The steps recently taken by the United Kingdom Government tended to postpone a solution of the problem and to create conditions which would make such a solution even more difficult in the future. Like all the other solutions proposed by the United Kingdom, they aimed at preventing the only just and equitable solution of the problem and the one that would be in accord with the fundamental principles of the United Nations: granting the people of Cyprus the freedom to determine its own destiny.

17. Like the other plans, the Macmillan plan had been rejected by the people of Cyprus, but the British Government had now decided to put it into effect. The United Kingdom representative had stated that the partition of the island would be a misfortune for Cyprus. However, such a misfortune would be the end-result of the plan, which also unilaterally violated the Treaty of Lausanne<sup>2/</sup> and was based on the principle that the United Kingdom had the right to determine the fate of the Cypriot people, whose aspirations had never been taken into account when treaties or agreements concerning them had been signed.

18. The Prime Minister of the United Kingdom had stated in the House of Commons on 19 June 1958 that any solution of the Cyprus problem must safeguard the British bases and military installations on the island, which were necessary to enable the United Kingdom to carry out its international obligations. Cyprus was an important base for the policy of colonialist aggression in the Middle East and for the aggressive policy of NATO against the peoples of Eastern Europe.

19. Field-Marshal Sir John Harding, former Governor of Cyprus, in stressing the role to be played by air forces in helping the allies, had stated that modern aircraft operating from bases in Cyprus could strike deep into the heart of the Soviet Union. They could even more easily strike at Bucharest, Sofia, Belgrade, Cairo, Baghdad or Amman.

20. The people of Cyprus would obviously never be free in their own country as long as the island remained a foreign military base. It was because they were aware of the inability to maintain their base in the midst of a population which they had oppressed for many years that the British authorities had done everything possible to create dissension on the island, hoping thereby to continue their colonial domination in one form or another. According to Archbishop Makarios, the United Kingdom had formerly asserted

<sup>2/</sup> Treaty of Peace, signed at Lausanne on 24 July 1923. League of Nations, Treaty Series, vol. XXVIII, 1924, No. 701.

that it needed Cyprus to keep Suez; at the present time, it claimed that it needed Cyprus because it had lost Suez.

21. Some delegations did not wish the United Nations to take steps to solve the problem. As a matter of fact there was no justification for postponing a solution, which lay in granting the people of Cyprus the necessary attributes of sovereignty. The General Assembly should adopt a resolution along those lines.
22. His delegation would be able to support the draft resolution submitted by Greece (A/C.1/L.222) or any other draft resolution acceptable to the Cypriot people, who had gone as far as possible in making concessions.
23. Mr. SCHURMANN (Netherlands) stated that his delegation was reluctant to vote in favour of any one of the three draft resolutions submitted by the parties for two reasons. First, extraneous support for any one of the positions would do more harm than good. There was too often a tendency in the United Nations to take a stand on a priori grounds without paying sufficient attention to the possibilities of implementing the proposed resolutions. Secondly, the United Nations was not always the best place to settle a dispute. Article 33 of the Charter of the United Nations listed eight methods of settlement that did not involve the United Nations. Until all those methods had been tried out, the United Nations should not intervene unless all the parties concerned requested it to do so. In the circumstances, the United Nations should refrain from expressing its preference for one kind of solution or another, in order not to lessen the chances for understanding which might still exist. Progress had already been made and negotiations were still the best way of settling the dispute.
24. The United Nations should appeal to the inhabitants of Cyprus to refrain from acts of violence and bear in mind the necessity for an atmosphere of peace if a solution acceptable to all was to be found.
25. Mr. DE MARCHENA (Dominican Republic) believed that, if the question of Cyprus was to be solved without the development of new difficulties between the nations concerned, the internal jurisdictional aspects, over which the United Kingdom exercised sovereignty, should be reconciled with the various international factors in that complex problem.
26. The task was a difficult one because of the geographical situation of the island, because of the political considerations affecting interests and passions and because the principle of self-determination was involved. That principle, which was dear to the Dominican Republic and to all Latin-American countries, should be put into effect progressively, in accordance with the United Nations Charter. The appeal made by the United States delegation at the 1000th meeting seemed therefore very pertinent.
27. At the 999th meeting, the Turkish representative had stated that if independence had been granted, not to peoples, but to individual geographical units, the map of the world would be very different from what it was and there might have been a sovereign State of Hispaniola, instead of the sovereign States of Haiti and the Dominican Republic. He wished to point out that, in 1697, Hispaniola had not been able to invoke the principle of self-determination when France had received the western part of the island under the Treaty of Ryswick. The Spaniards and the Dominicans had not even exercised that right in 1795, before the signing of the Treaty of Basel, which had again laid down provisions governing the sovereignty and the inhabitants of the present Dominican Republic. The island had been divided in 1697, and independence had been gradually achieved by two peoples, not by two separate geographical units, as might have been gathered from the interpretation offered by the Minister of Foreign Affairs of Turkey. The factors in the Cyprus problem were not the same as those in the case of Hispaniola.
28. His delegation had noted with much interest the steps taken by the Secretary-General of NATO. It hoped that a new means of conciliation would be found, a modus operandi based on the principles of the Charter of the United Nations, particularly if certain details were clarified and settled in private, rather than in public, discussion. Furthermore, there was no point in putting a series of proposals before the General Assembly if they were not accepted by the parties concerned and would not receive a sufficient number of votes.
29. Mr. OSMAN (Sudan) considered it the duty of the United Nations under the Charter to continue its efforts to find a solution to the Cyprus question. His delegation thought that the Cypriots had a right to self-determination and independence. It also considered that nothing should be done which might prejudice the fundamental rights of the Turkish minority. However, that consideration must not limit the natural political evolution of the island. Moreover, Cyprus ought to remain an individual case and not be taken as an example to be applied wherever other problems created by the existence of minorities had to be solved.
30. In his delegation's opinion, the views of the parties concerned were not irreconcilable. The Committee should therefore try to work out recommendations which would be acceptable to the parties primarily concerned and conducive to a final and just settlement of the question. He was sure that both communities in Cyprus would be able to live together and, in the words of the Peruvian representative (1002nd meeting), share a "unity of destiny".
31. Mr. BRATUS (Ukrainian Soviet Socialist Republic) said that the Cyprus problem was a result of the colonial policy of the United Kingdom, which refused to accept the fact that the colonial era had ended. In order to justify themselves before public opinion and to divert the attention of the Cypriots from their struggle for self-determination, certain Governments had created artificial problems, like that of the disputes between Greek and Turkish Cypriots.
32. The accusations of gangsterism levelled at the patriots of Cyprus by the United Kingdom representative (996th meeting) were unfounded. Neither in their goals nor in their methods could those patriots be compared with bandits.
33. In response to the wholly justified appeals of the Cypriots that they be allowed to exercise their right to self-determination, the United Kingdom had resorted to various stratagems intended to reinforce its colonial domination. Thus, it had adopted the widely publicized Macmillan plan.
34. All the negotiations between the three parties principally concerned had come to nothing because the United Kingdom was unwilling to solve the problem



and wished to by-pass it by taking temporary measures. Everything—the island and its population—must be subordinated to the British Government's military interests. The strategic importance of the island and the part it had played during the aggression by the United Kingdom, France and Israel against Egypt in 1956 were well known. Thus the Cyprus problem was closely linked with that of international security in the Near and Middle East. There was no doubt that the aggressive designs of the two military blocs, NATO and the Baghdad Pact, constituted one of the main reasons for the denial to the Cypriots of their legitimate desire to exercise their right to self-determination.

35. Since the British Government had decided to implement its plan of 19 June 1958 for the settlement of the problem, an unprecedented wave of repression had swept over the island. Tension had reached a hitherto unknown pitch. In the light of those circumstances, the United Kingdom draft resolution (A/C.1/L.221) was surprising, to say the least: it congratulated the United Kingdom on its policy and invited it to continue in the same direction. Such a text could not contribute to the solution of the problem.

36. His delegation considered that there was only one just solution to the problem: to put an end to the colonial régime and allow the people of Cyprus to exercise their right to self-determination.

37. Mr. THORS (Iceland) noted that the efforts made by the United Nations since 1954 to settle the Cyprus question had been in vain. What was even more serious, all attempts at negotiation between the parties concerned had failed.

38. Cyprus was today a British Crown Colony and Article 73 of the Charter of the United Nations recognized the principle that the interests of the inhabitants of Non-Self-Governing Territories were paramount. In conformity with Article 1 of the Charter, his delegation had always supported the right of the people of Cyprus to decide their own fate, for it was firmly convinced that the people themselves must decide what economic and cultural ties they wished to maintain and should be free to establish whatever form of government they desired.

39. His delegation regretted that the dispute between Greece and Turkey, two allied countries with which Iceland maintained friendly relations, had become so intense. Because of the tension prevailing on the island, a final solution hardly seemed possible or even advisable at present. It must be hoped that in time the two communities would come to realize that it was in their own interest to live in harmony on the island, which belonged to them alone.

40. It was wrong to say, as some representatives had, that the Committee was acting as a real-estate agent and evaluating a piece of land in order to sell it or allocate it to one country or another. Nor was the Committee a group of military strategists discussing the usefulness of the bases established on the island or their importance to one or another alliance. Those considerations were entirely extraneous to the question, which was that of the right of peoples to self-determination. It was the application of that principle which had enabled the Federation of Malaya to obtain its independence through the union of the three races which made up its population. The

people of Cyprus might take guidance from that example.

41. His delegation would support any draft resolution that could promote continued negotiations between the parties concerned and lead to self-determination, so that the people of Cyprus could attain self-government in the near future and, eventually, independence.

42. Mr. PAZHAWAK (Afghanistan) said that his country maintained friendly relations with Greece, Turkey and the United Kingdom, and that over the centuries close cultural and historic relations had united it with the Greeks and Turks everywhere in the world. Afghanistan's interest in a peaceful solution of the Cyprus problem stemmed from its deep concern over the present regrettable situation of the population of Cyprus and the bloodshed which was disturbing the peace of the island and constituted a threat to peace in that important part of the world. The interest of Greece and Turkey in the Cyprus problem was easy to understand: no nation could remain indifferent to a situation in which the fate and the future of its kinsmen were at stake.

43. However, the problem of Cyprus was basically that of the inhabitants of a Non-Self-Governing Territory, and a peaceful solution to it should be found by the United Nations. Such a solution should be based on the consent of the inhabitants of Cyprus, whether Greek or Turkish in origin, whose political aspirations should be fulfilled in accordance with the United Nations Charter and respect for fundamental human rights.

44. A constructive solution would hardly be possible if extreme positions were maintained. It was essential to achieve a reconciliation of the views of the three countries concerned, Greece, Turkey and the United Kingdom, with the consent of the people of Cyprus.

45. His delegation therefore hoped that a joint proposal by Greece, Turkey and the United Kingdom, or a proposal acceptable to those three countries and the people of Cyprus, would be submitted to the Committee. In that hope, it would refrain from discussing the draft resolutions so far submitted.

46. However, if it proved impossible to reach agreement, his delegation would be guided by the principles it had just stated, for its earnest desire was to ensure the happiness of the inhabitants of Cyprus and the creation of peaceful conditions and good-neighbourly relations in that part of the world.

47. Mr. GARIN (Portugal) felt that repeated examination of the question of Cyprus might make it more difficult to find a solution, since friendly negotiations between the United Kingdom, Greece and Turkey could alone be successful. Violence of deeds could never be cured by asperity of words.

48. Unfortunately, a few delegations, far from encouraging the parties to find agreement, had seized the opportunity to inject their propaganda into the discussion. They might do well to ponder the fact that those three countries, which were members of the same defence organization, felt sufficiently free to disagree with one another on the question in point.

49. His delegation doubted the propriety of a debate on the question of Cyprus. Its doubts were confirmed by the fact that the debate was not providing any constructive solution to the problem, and the only

conclusion which could be drawn from it was that the United Kingdom had the necessary moral authority to be trusted in the role it was playing.

50. That role was extremely difficult because of certain factors of major importance, such as the need to safeguard peace and security, the conflicting interests of the two Cypriot communities, the divergent viewpoints of the other two Governments concerned, and the absence of Cypriot nationalism. If a settlement was to come about, the three Governments must be left to continue their negotiations with the certainty that their common ideals and the interests uniting them were stronger than their differences on the question of Cyprus. There had been some improvement since the previous year and it could be hoped that the situation would return to normal provided that nothing were done to widen the disagreements.

51. Mr. SOSA RODRIGUEZ (Venezuela) said that the question of Cyprus had first been brought before the General Assembly five years ago and that each year thereafter the situation had become more tragic and more difficult to solve. The basic reason for that was the failure so far to satisfy the legitimate aspirations of a people struggling for recognition of its right freely to decide its future in conformity with the principles of the Charter of the United Nations. Regrettable events had undoubtedly occurred on Cyprus, but it could not be denied that the Cypriot people had resorted to guerrilla warfare because they had become exasperated by the slow course of the negotiations and the confusion of proposals and counter-proposals which did not fulfil their aspirations.

52. His country was not directly concerned with the question, but his people, for whom the principle of self-determination was sacred, could not remain indifferent to the fate of the people of Cyprus.

53. When the time came to vote on the various draft resolutions before the Committee, his delegation would be guided by the following general considerations: first, the legitimacy of the Cypriot people's aspirations to self-determination and self-government; secondly, the need to guarantee that the legitimate rights of the Turkish minority on the island would not be infringed and that that minority would be able gradually to integrate itself with the remainder of the Cypriot population without discrimination between Greeks and Turks (in other words, a situation would gradually emerge similar to that existing, for example, in Canada, where there were no longer either British or French, but only Canadians); thirdly, the need to guarantee peace in that region in the interests of the Cypriots themselves. Those requirements could only be met by means of negotiations between the parties concerned, and the Cypriot people must be convinced that the recommended negotiations were not a political expedient aimed at preserving the status quo.

54. While giving the people of Cyprus the assurances to which they were entitled, the General Assembly should recommend the resumption of negotiations, urge that acts of violence should cease forthwith, and recognize the need for a transitional period during which the United Kingdom could gradually transfer its responsibilities on Cyprus to local authorities without disturbing the peace of the island.

55. The CHAIRMAN announced that a draft resolution (A/C.1/L.228) had just been submitted by the delega-

tions of Ceylon, Haiti, Iceland, India, Ireland, Nepal, Panama, Sudan and the United Arab Republic (A/C.1/L.228).

56. Mr. NOBLE (United Kingdom) said that his delegation had one major objection to make with regard to the nine-Power draft resolution (A/C.1/L.228) which had just been circulated.

57. During his opening speech (996th meeting), he had explained that his Government was not in favour of partition and that it had been at pains to provide in its partnership plan for institutions which would help to preserve the island's integrity. But he had also emphasized that it was important that the General Assembly should do nothing at the present time to point the way to any final settlement. As the Minister of Foreign Affairs of Greece had himself said at the 1001st meeting, it was essential not to prejudice the future. Whatever the individual views of the members of the Committee on the future integrity of the island, reference could not be made to that integrity in a resolution without prejudicing the future to some extent.

58. It was the essence of the interim arrangements proposed by the United Kingdom that none of the parties should at present be required to abandon their long-term aspirations in the delicate state of inter-communal feeling in Cyprus today. It would be as dangerous to require the Turkish community to abandon their hopes of partition as it would be to require the Greek Cypriots to abandon their hopes of preserving the island's integrity.

59. It was vital that for the time being all final solutions of the Cyprus problem should remain, at least theoretically, possible. The wording of the nine-Power draft resolution did not permit that because of its insistence on preserving the island's integrity at all costs. He asked those who agreed with his delegation that that integrity was desirable to weigh the danger that insistence on it now might provoke its opponents into civil war or an even wider conflict.

60. Contrary to what was stated in the seventh paragraph of the preamble of the draft resolution, he had not said that his Government did not consider partition to be a possible solution. He had only said that his Government did not favour it. Partition was a solution at present desired by one of the Governments and one of the communities concerned. Their desire was the result of the fear and the lack of confidence which the terrorist tactics of EOKA (National Organization of Cypriot Fighters) had evoked, and, as he had already said at the 996th meeting, the present aim must be to remove that fear. In the situation as it was, that fear would only grow sharper if the General Assembly adopted the nine-Power draft resolution.

61. His delegation did not consider, however, that the present debate was very far from a satisfactory outcome. The course of the debate so far had indicated general agreement on the need for an interim settlement and on the desirability of negotiations between the parties concerned. His Government remained willing to resume negotiations and to do everything possible to ensure their real success.

62. Mr. THORS (Iceland) pointed out, as a sponsor of the draft resolution which had just been submitted, that it was unusual for a draft resolution to be discussed and so vehemently opposed before the sponsors had had

a chance to submit it formally. The draft resolution in question would be introduced at the following meeting.

63. Mr. ZORLU (Turkey) noted that the United Kingdom representative had drawn the Committee's attention to certain errors in the text of the draft resolution with regard to the statement made by the United Kingdom delegation at the commencement of the debate (996th meeting). Those errors should be corrected so that the draft resolution might be submitted in good and due form.

64. The CHAIRMAN said that it was in fact usual for the sponsors of a draft resolution, or some of them, to submit their draft formally to the Committee, but that did not mean that a delegation which observed an error in the wording of the document concerning one of its previous statements could not point out that error. The draft resolution would naturally be examined in detail in due course.

The meeting rose at 6.30 p.m.

**ANNEX 112**

Thomas Franck and Paul Hoffman, 'The Right to Self-Determination in Very Small Places'  
(1976) 8 *NYU Journal of International Law and Politics* 331

# THE RIGHT OF SELF-DETERMINATION IN VERY SMALL PLACES

BY THOMAS M. FRANCK\*  
PAUL HOFFMAN\*\*

## I. INTRODUCTION

The days of Western colonial dominance have drawn to a close. In the space of a mere twenty years, a billion people have undergone the transition from subjects of a foreign imperium to citizens of independent states.

For the most part, this transition has been smooth enough, considering the extraordinary depth of the legal, ideological and psychological changes occurring in its wake. To be sure, there were exceptions. France and Portugal were too sentimentally tenacious in Algeria, Mozambique and Angola, seeking to hold on to what they regarded as "overseas provinces" tied by long histories of association to the metropole and settled by substantial European populations. They waged hopeless, protracted battles in those territories not only against national liberation forces, but also against an irresistible tide of historical inevitability. The Belgian Congo, now Zaire, became a shambles for the opposite reason. Once the colonial power realized it could not hold on forever it opted for immediate abandonment, and the speed of the transition caught the indigenous population tragically unprepared. In the cases of Vietnam and Indonesia, France and the Netherlands tried, by force of arms, to reassert their colonial control over countries that had seen the myth of Western invincibility destroyed by the Japanese and which, released from foreign occupation by the collapse of Japan, refused to don again the old colonial harness. Under similar circumstances, the United States had the prescience to grant independence to the newly-liberated

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The views expressed here are those of the authors in their personal capacities.

Philippines rather than attempt to restore the *status quo ante*.<sup>1</sup> In virtually all other instances, the Western European colonial powers chose the path of peaceful decolonization.<sup>2</sup>

That the devolution of empire, with a few exceptions, has been a relatively painless experience is due to a number of factors. One is the post-war ascendance in Western Europe of Labor, Radical and Social Democratic movements ideologically committed to social equality and therefore to decolonization. While men like Attlee and Mendes-France did not govern their countries for particularly long periods, the steadfastness of their vision permanently transformed political attitudes in their respective countries, particularly on the colonial issue. Thus conservatives, like Harold Macmillan, Ian Macleod and Charles de Gaulle, carried forward what the radicals had begun. In this, they also responded to the growing economic burden of policing and pacifying regions and peoples caught up in the new wave of nationalism. A second contributing factor is the emergence of Western European unity as a serviceable substitute for the national dream of empire. Finally, there is the role of the United Nations.

The United Nations has significantly accelerated the momentum for peaceful decolonization and has done so both instrumentally and conceptually. Instrumentally, the organization has provided a forum in which the non-colonialist states—a large majority of the members even in 1945—could badger and encourage the imperial states to grant independence. The U.N. Charter created a trusteeship system and a Trusteeship Council which imposed on the powers administering trust territories an obligation to report annually and to permit periodic international inspection. Colonies and protectorates which did not fall under the trusteeship system were still covered by the Charter's article 73 obligations.

The conceptual force behind the U.N. role is rooted in much earlier European and Western hemispheric intellectual developments—in the vision of Simon Bolivar, the Monroe Doctrine,<sup>3</sup> J.S. Mill and J.-J. Rousseau. The "right of self-determination"

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1. President Truman proclaimed independence for the Philippines, 60 Stat. 2695 (1946), pursuant to authority granted by Congress in the Philippines Independence Act, 48 Stat. 456 (1934).

2. Among other, lesser, exceptions are Goa and Guinea-Bissau. It can also be argued that Kenya was a partial exception and that Southern Rhodesia is another.

3. E. Weisband, *The Ideology of American Foreign Policy: A Paradigm of Lockian Liberalism* (1973).

became central to President Wilson's scheme for resolving European boundary questions after the dismantling of the German and Austro-Hungarian empires.<sup>4</sup> But it was the U.N. Charter, a solemn international treaty of unprecedentedly wide adherence, which at last elevated the concept to a universal legal responsibility. Article 73 obliges those members "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . ."<sup>5</sup>

In Resolution 1514,<sup>6</sup> the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations further refined the concept of self-determination, enumerating for non-self governing territories which were not covered by trusteeship agreements a set of obligations very similar to those imposed by the trusteeship system. It stated that "all peoples have the right to self-determination;" that "repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence;" and that "[i]mmediate steps shall be taken . . . to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom."<sup>7</sup>

These concepts were operationalized by the creation of a watchdog committee—the Special Committee<sup>8</sup>—which began to assume the same function towards non-self governing territories as was exercised by the Trusteeship Committee in respect of trust territories. In pursuit of the obligations set out in the Charter and Resolution 1514, the Special Committee has regularly investigated

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4. For a discussion of the historic U.S. relation to self-determination see Pomerance, *The United States and Self-Determination: Perspectives on the Wilsonian Conception*, 70 *Am. J. Int'l. L.* 1 (1976).

5. U.N. Charter, art. 73(b).

6. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66-67, U.N. Doc. A/4684 (1960).

7. *Id.*

8. The Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, established by G.A. Res. 1654, 16 U.N. GAOR Supp. 17, at 65, U.N. Doc. A/5100 (1961). [hereinafter "Special Committee"]

colonial territories and made reports to the General Assembly on compliance and non-compliance. The Assembly, in turn, has passed resolutions commending or demanding progress in individual colonies and, in the unusual circumstance of a threat to peace and security, has recommended action by the Security Council.<sup>9</sup>

Thus, due to various factors, the "right of self-determination" has played a key role in reshaping the post-war world. By 1976, the job was virtually completed—almost, but not quite. The unfinished business of Rhodesia and the Namibian ex-mandate was still on the decolonization agenda. Moreover, in the process of liberating Africa, the Caribbean and Asia, the momentum for decolonization had bypassed some of the smallest colonies, the flotsam and jetsam of empire. That these bits and pieces should be the last to be decolonized is due primarily to two factors. First, some small territories either do not want to be on their own or have not reached a stage of development sufficient to make the choice. Second, some small, weak territories are actively coveted by stronger, more powerful neighbors which assert claims based on geography, history and/or ethnic affinity.

It may be paradoxical that these small territories should generate particularly stubborn and knotty problems, even creating threats to the peace and security of the international system, at the very end of a largely peaceful transition from colonialism to self-government. Nevertheless, this is precisely the case. The disposition of tiny territories like Djibouti<sup>10</sup> and Belize has brought neighboring states to the brink of war, as has the conflict over the Spanish Sahara, a larger territory with an almost negligible population.

Some of these territories have assumed disproportionate importance in world affairs because of their strategic location—Djibouti and Gibraltar, for example, command important international straits. Some, like the Falkland (Malvinas) Islands, have importance because they may possess petroleum or other mineral resources. All of them have coastlines which will entitle them,

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9. A recent example is G.A. Res. 3485, para. 6, U.N. Doc. GA/5438, at 262 (1975) (Press Release), in which the attention of the Security Council is drawn "to the critical situation" in Timor and which "recommends that it take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination . . . ."

10. "Djibouti" and "French Somaliland" are used interchangeably except where the context indicates a reference to the port city of Djibouti.



under the emerging terms of the new Law of the Seas, to broad economic zones of up to 200 miles width. To the international lawyer, however, the real importance of these seemingly unimportant imperial shavings lies not merely in their capacity for generating passionate and dangerous international disputes, not in the territories' very considerable strategic and economic value, but in the legal precedents being established in the troubled process of their decolonization. Quite possibly this last chapter in self-determination will again prove that hard cases make bad law. As a result of the politics being played with these "special cases," the legal principles of self-determination carefully outlined in the Charter and U.N. resolutions have suddenly come under fierce attack—not from the colonial powers, but from neighboring states, themselves beneficiaries of self-determination, with designs on the mini-territories. For example, now—at the very end of the colonial era—it is being asserted that all colonial peoples *do not* necessarily have the right to self-determination; that the right does not apply, for example, to a transplanted "settler" population—even one that has been "settled" for hundreds of years. Nor, it is alleged, does the right apply to a colony which, before the colonial era, was part of a neighboring state. As shall be seen, the new assertions may have broad implications that extend well beyond questions of decolonization and go to the essence of the legitimacy both of states and of their boundaries.

## II. THE SPANISH SAHARA AND PORTUGUESE TIMOR AS PRECEDENT

### A. *The Decolonization of the Spanish Sahara*

Although the Spanish—or Western—Sahara is a territory of 266,000 square kilometers (the size of Colorado), its indigenous population is a mere 75,000.<sup>11</sup> The Sahrawi population is comprised for the most part of persons of Moorish or Bedouin race who speak Hassania, a form of Arabic, and live an essentially rural, nomadic life. The majority of Sahrawis identify closely with a tribe, some of which are also found in the neighboring countries

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11. Report of the United Nations Visiting Mission to Spanish Sahara, in the Report of the Special Committee, U.N. Doc. A/10023/Add.5, Annex, at 26-27 (1975) [hereinafter: "Visiting Mission"].

of Mauritania, Morocco and Algeria.<sup>12</sup> What had hitherto seemed a valueless and inclement stretch of desert has more recently been actively coveted by these neighboring states, not least because of the discovery of vast phosphate deposits and the likely existence of other minerals, including oil and iron.<sup>13</sup>

Until 1974, the story of the decolonization of the Spanish Sahara was governed by the same norms as other decolonizations. Although both Morocco and Mauritania had indicated an interest based on historic claims, these were not strongly pressed. The U.N. General Assembly and Special Committee treated the colony as it would any other which the international community was nudging towards independence. Historic claims, after all, are nothing unusual in Africa, and in every other instance they had been rejected in favor of self-determination and the immutability of boundaries established by the colonial powers. Thus, Resolution 1514 had not only proclaimed that "all peoples have the right to self-determination" but also that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."<sup>14</sup> The Organization of African Unity buttressed that position by asserting that territories must exercise their right to self-determination within established colonial boundaries.<sup>15</sup>

If a colony, in the process of independence, wished to alter its boundaries by joining a neighboring state or by splitting into several states, it could do so only by the free vote of its inhabitants—never in response to the pressures or claims of others.<sup>16</sup> Indeed, where in the process of becoming independent there was an open question as to whether the territorial integrity of the colony should be altered in favor of a union or secession, it had become virtually mandatory for the U.N. to be present during the elections or plebiscite in which that issue was to be determined. Thus, the U.N. supervised plebiscites that led to the merger of British

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12. *Id.* at 28.

13. *Le Monde*, November 28, 1975, at cols. 1-3.

14. G.A. Res. 1514, para. 6, *supra* note 6.

15. O.A.U. Assembly Resolution AHG/Res. 17(1), 17-21 July 1964. See also the Charter of the Organization of African Unity, Article 3(3), which pledges "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."

16. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960).

Togoland with newly-independent Ghana in 1956, the merger of the British-administered Northern Cameroons with Nigeria in 1959 and 1961, the Southern Cameroons joining the Cameroon Republic in 1961, the division into two states of the Belgian territory of Ruanda-Urundi in 1961, and the free association between Western Samoa and New Zealand in 1962.<sup>17</sup> The U.N. also participated in the April, 1965 election of a legislature whose mandate was to write a new constitution for the Cook Islands as a first step leading to free association with New Zealand.<sup>18</sup> In 1969 the U.N. participated in the "act of free choice" by which the former Netherlands territory of Western New Guinea (West Irian) opted to become part of Indonesia.<sup>19</sup> In 1974 the U.N.'s Special Committee sent observers to the referendum in the British colony of the Ellice Islands in which the voters decided to separate from the Gilbert Islands, with which they had been jointly administered, and to become the separate territory of Tuvalu.<sup>20</sup>

Given this history of U.N. resolutions and practice, together with the fact that it was an open question whether the Sahrawis preferred independence for the Spanish Sahara or union with one or both of their principal neighbors, it was to be expected that the United Nations would recommend that a plebiscite be held under its auspices. This is precisely the recommendation made

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17. Fifteen Years of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, 2 Decolonization, No. 6, at 19-22 (1975). [hereinafter "Fifteen Years"]

18. G.A. Res. 2005, 19 U.N. GAOR Supp. 15, at 7, U.N. Doc. A/5815 (1965).

19. 23 Yearbook of the United Nations 175-179 (1969); Report of the Secretary-General Regarding the Act of Self-Determination in West Irian, 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 2, U.N. Doc. No. A/7723 (1969).

United Nations participation in the "act of free choice" in West Irian is at best an ambiguous precedent. The U.N. involvement led to the ratification of Indonesian consultative procedures which did not provide for "one man-one vote" and were obviously designed to achieve the result obtained, with the Indonesians exercising "at all times a tight political control over the population." *Id.* at 20. The U.N. failed to refine further the international due process requirements for acts of self-determination when an amendment submitted by Ghana, which would have given the people of West Irian a further opportunity to express their will, was defeated by a vote of 60 (including the United States) to 15, with 39 abstentions. 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 40, U.N. Doc. A/L576 (1969). The vote appears at 24 U.N. GAOR 1813, at 16 (1969).

20. *Fifteen Years*, supra note 17, at 21; Report of the United Nations Visiting Mission to the Gilbert and Ellice Islands, U.N. Doc. A/9623/Add.5 (Part IV), Annex I (1974).

consistently between 1964 and 1973 by the U.N. Special Committee and the General Assembly.<sup>21</sup> Almost every year, resolutions called on Spain to implement the Sahrawis' right to self-determination. Beginning in 1966, the General Assembly consistently asked Spain "[t]o create a favourable climate for the referendum to be conducted on an entirely free, democratic and impartial basis . . ." and to provide all the necessary facilities to a United Nations mission so that it could participate actively in the organization and holding of the referendum.<sup>22</sup>

Spain resisted these entreaties for a decade.<sup>23</sup> Then, in July, 1974, after informing Morocco, Mauritania and Algeria,<sup>24</sup> Spain proclaimed a new law giving the Sahara internal self-government<sup>25</sup> and, six weeks later, announced that a self-determination plebiscite would be held under U.N. auspices during the first half of 1975.<sup>26</sup> When the foreign ministers of Algeria, Morocco and Mauritania met in Nouakchott on May 10, 1974, and again in Agadir on July 24, they still "reaffirmed their adherence to the principle of self-determination for the Spanish

21. The Special Committee first considered Spanish Sahara in 1963 and passed its first resolution on the territory in 1964. 19 U.N. GAOR, Annexes, Annex No. 8 (Part I), at 290-291, U.N. Doc. A/5800/Rev. 1 (1964). The General Assembly resolutions are: G.A. Res. 2072, 20 U.N. GAOR Supp. 14, at 59-60, U.N. Doc. A/6014 (1965); G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 72-73, U.N. Doc. A/6316 (1966); G.A. Res. 2354, 22 U.N. GAOR Supp. 16, at 53-54, U.N. Doc. A/6716 (1967); G.A. Res. 2428, 23 U.N. GAOR Supp. 18, at 63-64, U.N. Doc. A/7218 (1968); G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969); G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970); G.A. Res. 2983, 27 U.N. GAOR Supp. 30, at 84-85, U.N. Doc. A/8730 (1972); G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973).

22. G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 73, U.N. Doc. A/6316 (1966). The last resolution to contain these requests was G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 111, U.N. Doc. A/9030 (1973).

23. The 1969 resolution, G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969) "[r]egrets that it has not yet been possible for the consultations to take place which the administering Power was to conduct in connexion with the holding of a referendum. . . ." See also G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970). By 1973, G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973) deplored "the fact that the Special Mission provided for in earlier resolutions . . . has not yet been able to visit the Territory in order to carry out the task entrusted to it."

24. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9655 at 2 (1974).

25. *Id.*

26. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9714 (1974).

Sahara,"<sup>27</sup> but King Hassan II of Morocco, in a Youth Day speech on July 8th, began to sound a different note. With surprising vehemence he resurrected Morocco's claim to historic title and threatened to use the military, if necessary, to recover his "usurped" territories.<sup>28</sup>

The Moroccan and Mauritanian governments, faced with the popular Spanish decision to conduct a U.N.-supervised plebiscite in the Sahara, found themselves in an anomalous position. For the most part, they publicly continued to proclaim their support for self-determination, adding that a majority of Sahrawis clearly favored union with one or both neighbors. Privately, however, they knew that a popular vote could go against them and therefore decided to delay the plebiscite by taking the matter to the International Court of Justice. In December, 1974, a majority of the General Assembly, cleverly led by Morocco, inexplicably voted to solicit an advisory opinion of the Court asking whether, before its colonization by Spain, the Western Sahara had belonged to the Moroccan empire or the Mauritanian "entity."<sup>29</sup> The Resolution also called on Spain to postpone, pending the I.C.J.'s decision, the referendum that had been so ardently sought for nearly a decade.<sup>30</sup>

Ten months later the Court, after hearing extensive argument, found the questions posed relevant only in the context of the right of the Sahrawi population to self-determination, and then only as to "the forms and procedures by which that right is to be realized."<sup>31</sup> During the past fifty years, self-determination had become the rule.<sup>32</sup> The exercise of this right could, of course, result in a decision for something other than independence: free association or even integration with another state. But the choice between these legitimate forms of decolonization must always be the "result of the freely expressed wishes of the territory's peo-

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27. Report of the Special Committee, U.N. Doc. A/9623 (Part II), at 23 (1974).

28. Letter from the Permanent Representative of Spain, *supra* note 24, at 2.

29. G.A. Res. 3292, 29 U.N. GAOR Supp. 31, at 103-04, U.N. Doc. A/9631 (1974).

30. *Id.*

31. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 36. [hereinafter: "Advisory Opinion"]

32. *Id.* at 32, citing The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) in [1971] I.C.J. 31.

ples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage."<sup>33</sup>

The Court went on, almost incidentally, to find that the evidence before it indicated no ties of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity "as might effect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."<sup>34</sup> The current, freely expressed will of the population, not the vicissitudes of history, must determine their future status.

While the International Court was deliberating, a U.N. visiting mission, another by-product of Resolution 3292 (XXIX), went to the Western Sahara with the task of "securing firsthand information on the situation prevailing in the Territory, including information on political, economic, social, cultural and educational conditions, as well as on the wishes and aspirations of the people."<sup>35</sup> From extensive travel in the Sahara and in the neighboring countries, as well as from public and private meetings, "it became evident to the Mission that there was an overwhelming consensus among Sahrawis within the Territory in favour of independence and opposing integration with any neighbouring country."<sup>36</sup>

Faced simultaneously with the adverse decisions of the International Court and of the Visiting Mission, Morocco decided to use force to compel Spain to turn over the Sahara, although, from subsequent events, it seems clear that contingency preparations for the "Green March," as the Moroccan invasion came to be known, had been months in the making. The day after the I.C.J. opinion, Rabat announced a massive march of 350,000 "unarmed civilians" that would enter the Sahara "to gain recognition of its [Morocco's] right to national unity and territorial integrity."<sup>37</sup> When the U.N. Security Council failed to act decisively against

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33. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960), cited by the I.C.J. with approval in Advisory Opinion, *supra* note 31, at 32-33.

34. *Id.* at 68.

35. Visiting Mission, *supra* note 11, at 4 (1975).

36. *Id.* at 48.

37. Letter from the Permanent Representative of Morocco to the United Nations to the President of the Security Council, Oct. 18, 1975, U.N. Doc. S/11852 (1975).

this flagrant violation of the self-determination rule,<sup>38</sup> Spain, weakened by the prolonged dying of the incapacitated Generalissimo Franco, decided to accede to the claims of Morocco and Mauritania. On November 14, 1975, a joint Moroccan, Mauritanian and Spanish communiqué was issued in Madrid which reported that secret negotiations, carried on in a "spirit of the utmost friendship, understanding and respect for the principles of the Charter of the United Nations . . . have led to satisfactory results in keeping with the firm desire for understanding among the parties and their aim of contributing to the maintenance of international peace and security."<sup>39</sup>

The secret Madrid agreement in effect stipulates Spain's agreement to Moroccan and Mauritanian partitioning of the colony. In return, Spain is permitted to keep a 35% interest in Fosbucraa, the 700-million dollar Saharan phosphate company.<sup>40</sup> Spain agreed to establish an interim regime in which a Spanish governor, assisted by Moroccan and Mauritanian deputy governors, would function until February 28, 1976, at which time its responsibilities would terminate. Algeria, left out of the Madrid negotiations, declared that it would accord no validity to the agreement<sup>41</sup> and that it intended to arm POLISARIO, the pro-independence movement in the Sahara. By the end of February, 1976, 60,000 Sahrawis—three-quarters of the population—became refugees, primarily in Algeria, as the Moroccans moved to crush all resistance.<sup>42</sup>

At the U.N., the General Assembly had passed two totally ineffective—and, indeed, wholly conflicting—resolutions on December 10, 1975. The first of these, Resolution 3458A (XXX), reaffirmed "the inalienable right of the people of the Spanish Sahara to self-determination . . ." and called on the Secretary-General "to make the necessary arrangements for the supervision

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38. The initial Security Council resolution, passed on October 22nd, appealed to the parties "to exercise restraint and moderation" so that the Secretary-General could arrange consultations. S.C. Res. 377 (1975). It was not until November 6th that the Council summoned the will to deplore the march and call for Morocco to withdraw. S.C. Res. 380 (1975).

39. Third Report by the Secretary-General in pursuance of Security Council Resolution 379 (1975) relating to the situation concerning Western Sahara, U.N. Doc. S/11880, Annex I, at 1 (1975).

40. Morocco and Mauritania have published an agreement under which the two countries will divide the proceeds from the Bu Craa mines. *The Times* [London], April 17, 1976, at 5, cols. 1-2.

41. Third Report by the Secretary-General, *supra* note 39, Annex IV, at 2-3.

42. Interview with Spanish diplomats and UN Secretariat personnel.

of the act of self-determination." The second, Resolution 3458B (XXX), took note of "the tripartite agreement concluded at Madrid on 14 November 1975 by the Governments of Mauritania, Morocco and Spain," recognized the "interim administration" established by the three countries, and called on that administration to permit "free consultation" with the population.

The two resolutions combine a maximum of hypocrisy with a minimum of concern for giving practical effect to the bartered self-determination norm. The U.N., however, was not without those who saw the dangerous implications in the disregard of this fundamental principle. The President-elect of the Thirty-First General Assembly, Sri Lanka's Ambassador Shirley Amerasinghe, condemned Morocco's opportunism and the indifference with which it had been met, warning the Third World that its failure to unite in opposition to the Moroccan and Mauritanian usurpation of the Western Sahara had condoned a trend "to replace the old imperialism by another form of foreign control founded on territorial claims."<sup>43</sup> Ambassador Salim of Tanzania, the Chairman of the Special Committee, further pointed out that "cardinal principles were involved" and that the United Nations was thus establishing an evil precedent which "would have consequences not only in the Territory itself but also beyond its borders and even beyond the African continent."<sup>44</sup>

Perhaps the only saving grace in this sordid affair thus far is the refusal of Special Representative Rydbeck to put the U.N. imprimatur on the "act of free choice" by a "rump" Yema'a<sup>45</sup> which was hastily organized by the Moroccans at the end of February. Thus, at least formally, the international requirement that Sahrawi people exercise their right to self-determination remains effective.

#### *B. The Seizure of Portuguese Timor*

The crisis in the decolonization of Portuguese or East Timor closely resembles—and parallels in time—the Western Sahara scenario. For almost three decades after the founding of the

43. U.N. Doc. A/C.4/SR.2175, Fourth Committee, at 15, November 27, 1975.

44. U.N. Doc. A/C.4/SR.2174, Fourth Committee, at 22, November 24, 1975.

45. The Yema'a was created by Spain in May, 1967 as the highest representative body of local administration in the territory. For further information on the history and functions of the Yema'a, see Visiting Mission, *supra* note 11, at 29-39.



United Nations, Lisbon consistently took the view that its 400-year old colony in the Indonesian archipelago was an integral part of the Portuguese nation. Alone among all colonial powers, the Portuguese refused to consider itself bound by Resolution 1514 or to report to the United Nations on the ground that its overseas possessions were not subject to decolonization.<sup>46</sup>

The population of Portuguese Timor, according to the 1970 census, is 610,541 persons, only some 600 being of European origin, who reside in an area totaling 18,899 square kilometers.<sup>47</sup> So stagnant is Timor's economy that one economist stated that it "had not yet reached the stage of underdevelopment."<sup>48</sup> Far from the center stage of international events, it attracted little attention for almost all of the U.N.'s first three decades. More recently, however, there have been reports that Timor may be richly endowed in several minerals, as well as in petroleum.<sup>49</sup>

The attitude of Portugal towards East Timor and its other overseas possessions changed radically with the Portuguese revolution of April 25, 1974 and the installation of the Junta of National Salvation. Soon thereafter, Colonel Aldeia, the governor of the territory, was reported to have announced that the population of Timor would be given the right to decide by referendum whether the Territory should become independent, continue to be Portuguese or become part of Indonesia.<sup>50</sup> Almost immediately, three political parties were organized, each favoring one of

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46. Under the Portuguese Constitution, as revised in 1971, and the Overseas Organic Law of 1972, Timor had the status of an "overseas province" of Portugal. The relevant provisions of the 1972 law are summarized in the Report of the Special Committee, 27 U.N. GAOR Supp. 23, Vol. III, at 191-98, U.N. Doc. A/8723/Rev. 1 (1972). Timor was represented by one member in the Portuguese National Assembly, elected by fewer than 5,000 qualified voters. Report of the Special Committee, 28 U.N. GAOR Supp. 23, Vol. III, at 304, U.N. Doc. A/9023/Rev. 1 (1973). See also Report of the Special Committee, U.N. Doc. A/10023/Add.1, Chap. VIII, Annex B, at 37ff (1975).

47. Report of the Special Committee (1972), *supra* note 46, at 191.

48. Quoted in Report of the Special Committee, 26 U.N. GAOR Supp. 23, Vol. II, at 260, U.N. Doc. A/8423/Rev.1 (1971). The literacy rate in Timor was estimated in 1974 as under 10%, with fewer than 10 college graduates in the territory. Report of the Special Committee (1975), *supra* note 46, at 50.

49. By 1972, Timor Oil Corporation, with headquarters in Australia, began to grant concessions to two exploration companies, one Australian, the other Dutch, and other concessions were granted to prospect for iron, manganese and chromium. Report of the Special Committee (1972), *supra* note 46, Vol. III, at 300-01. The territory is also believed to have deposits of copper, gold and zircon. Report of the Special Committee (1973), *supra* note 46, at 308.

50. Report of the Special Committee, U.N. Doc. A/9623/Add.1 (Part I), at 20 (1974).

these three options. On July 24, 1974, the Council of State in Lisbon abrogated the former territorial definition of the Republic of Portugal and acknowledged the right of self-determination, including independence, for all overseas territories under Portuguese administration.<sup>51</sup> On December 3, the Portuguese Minister for Interterritorial Co-ordination, after returning from talks in Australia and Indonesia concerning the future of Timor, confirmed the Junta's commitment to a referendum to determine the freely expressed will of the people of Timor and promised that Portugal would scrupulously respect the results obtained.<sup>52</sup>

Of the three political parties organized in 1974, FRETILIN (Frente Revolucionária Timor Leste Independente) was believed to have the widest following in the territory.<sup>53</sup> It advocated complete independence and, although it initially characterized itself as social democratic, adopted a Marxist patina, possibly reflecting the connection of some of its leaders with the dominant FRELIMO movement in Mozambique and with the young radical officers then in the ascendance within the Portuguese Junta. However, ideological characterizations may be inappropriate to the more fluid situation on the island.<sup>54</sup> UDT (União Democrática de Timor), formed in May, 1974, stood for continued union or federation with Portugal, gradually leading to independence; the third party, APODETI (Associação Popular Democrática Timorense) favored union with Indonesia.<sup>55</sup>

As preparations for the holding of a plebiscite continued during 1974 and 1975, the Indonesian response, at least in public, evolved very much like that of Morocco. At first Djakarta indicated that it wanted to see the people of Timor freely exercise

51. Report of the Special Committee (1975), *supra* note 46, at 38.

52. *Id.* at 39.

53. *Id.* at 39-40. Reports indicate that FRETILIN was formed initially as an underground movement in 1970. See also Report by the Secretary-General in pursuance of Security Council Resolution 384 (1975), U.N. Doc. S/12011, Annex, at 3 (1976). [hereinafter: "Resolution 384 Report"]

54. For an account of the situation on Timor during 1975 and early 1976 see the series of reports prepared for the Australian Parliament by the Legislative Research Service of the Parliamentary Library including: "Portuguese Timor" (14th March 1975), "Portuguese Timor—The Independence Movement from Coalition to Conflict" (14th October 1975), and "The Timor Affair—From Civil War to Invasion by Indonesia" (27 February 1976). Reports differ on the relative strength of the parties. It seems clear that UDT had substantial support in the territory. Portuguese Timor, *id.* at 14.

55. Resolution 384 Report, Annex, *supra* note 53, at 3.

their right of self-determination. As late as September 9, 1974, Foreign Minister Adam Malik maintained that Indonesia would in no way attempt to influence the choice of the population of Timor with respect to their future, which his government regarded as a purely internal matter for the people themselves. If they chose integration with Indonesia, that outcome, of course, would be welcome.<sup>56</sup> By the end of the year, however, Malik told an assemblage of Indonesian students that Timor's choice should be restricted to the two alternatives of integration with Indonesia or continuation under Portuguese control, and that Timorese independence was not a realistic alternative.<sup>57</sup> By January, 1975, the Indonesian Consulate in Dili, the capital of Portuguese Timor, was closed, and by March there were reports of an impending invasion by Djakarta's forces, which the Indonesian government denied.<sup>58</sup>

These events coincided with the formation of a coalition between UDT and FRETILIN, which criticized APODETI for advocating integration with Indonesia, a development that could not have pleased Djakarta.<sup>59</sup> This uneasy coalition disintegrated just before the June, 1975, Macau Conference, convened by Portugal to plan elections and a transitional government.<sup>60</sup> UDT and APODETI attended the meeting, but FRETILIN did not. Agreement was reached among those present to hold general elections in October, 1976 by secret ballot and with universal suffrage and to terminate Portuguese rule by October, 1978.<sup>61</sup> The Portuguese government then promulgated Law 7/75 which confirmed "the right of the people of Timor to self-determination . . . in accordance with the relevant resolutions of the United Nations Organization and the scrupulous safeguard of the principle of respect for the wishes of the people of Timor."<sup>62</sup> But without FRETILIN the plan failed, and by July inter-party violence had become endemic.

On August 11, UDT attempted a coup in Dili, alleging that the entire territory was being taken over by FRETILIN, with the connivance of leftist Portuguese officers, and that FRETILIN was

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56. Report of the Special Committee (1975), *supra* note 46, at 41.

57. *Id.*

58. *Id.* at 41-42.

59. Resolution 384 Report, Annex, *supra* note 53, at 3.

60. *Id.*

61. *Id.*

62. Quoted in Resolution 384 Report, *id.*

plotting its own coup on August 15th—thus the need for a pre-emptive strike.<sup>63</sup> A counter-coup by FRETILIN occurred on August 20, and by mid-September that party appeared to be in *de facto* control of most of the territory.<sup>64</sup> UDT now executed a nimble *volte face*, joining APODETI in a call for union with Indonesia. The two parties claimed that they spoke for a majority of the population, pointing out that between them they controlled 70% of the *sukus*, the traditional unit of political organization in the countryside.<sup>65</sup> From September to November, Portugal attempted to mediate the internal dispute in its colony and, in November, its foreign minister met with his Indonesian counterpart in Rome. The resulting communiqué<sup>66</sup> confirmed their mutual understanding that Portugal remained solely responsible for the territory. However, Lisbon could muster neither the unity of purpose nor the military means to compel the Timorese political parties to cooperate in the carrying out of an orderly act of self-determination.

On November 28, FRETILIN, now in effective control of most of the territory, issued a unilateral proclamation of independence, establishing the Democratic Republic of Eastern Timor. On November 30, UDT and APODETI issued a counter-declaration proclaiming the unification of Eastern Timor with Indonesia.<sup>67</sup> “After having been forcibly separated from the strong links of blood, identity, ethnic and moral culture with the people of Indonesia by the colonial power of Portugal for more than 400 years,” it said, “we deem it as now the right moment for the people of Portuguese Timor to re-establish formally these strong ties with the Indonesian nation.”<sup>68</sup>

63. *Id.* at 4.

64. See *The Timor Affair—From Civil War to Invasion by Indonesia*, supra note 54, at 3-4. This report asserts that by the time of the Indonesian invasion in December the Civil War in Timor had ended. *Id.*

65. U.N. Doc. S/PV.1865, at 31, December 16, 1975. (Mr. Jose Martins, KOTA representative). See also statements by Mr. Carrascaleo, UDT representative, *id.* at 17, and Mr. Goncalves, APODETI representative, *id.* at 23-25.

66. Joint press statement concerning talks between the foreign ministers of Portugal and Indonesia, held at Rome on 1 and 2 November 1975. U.N. Doc. A/C.4/802, Annex (1975).

67. Letter from the Permanent Representative of Indonesia to the Secretary-General, Dec. 4, 1975, U.N. Doc. A/C.4/808, Annex (1975). Two smaller parties, KOTA and Partido Trabalhista, joined in the proclamation. *Id.* On December 17, 1975, the coalition announced the establishment of the “Provisional Government of the Territory of East Timor.” Resolution 384 Report, supra note 53, Annex, at 4.

68. U.N. Doc. A/C.4/808, supra note 67, at 4.

Indonesia began to lay the groundwork for action against the newly proclaimed republic and notified the United Nations Secretary-General that "acts of terror, torture and brutality have been committed by . . . FRETILIN against other groups" and that these developments reveal "Portugal's incapacity to restore peace and general order and to preserve the fundamental rights of the people in the area."<sup>69</sup> It also noted that "Indonesia and its 130 million people have exercised great restraint in the face of mortar attacks directed against Indonesian territory . . . and other kinds of serious provocations committed by FRETILIN, resulting in the sacrifice of countless lives and property of our population. Such a situation, aggravated by the presence of tens of thousands of refugees, has gravely destroyed the national stability and endangered the security of Indonesia."<sup>70</sup> Denouncing the declaration of independence by FRETILIN, Djakarta expressed "a profound understanding" of the declaration by the other parties which "have proclaimed themselves as integrated with Indonesia."<sup>71</sup> Ominously, Indonesia next announced that it would

take the necessary measures to insure the safety of its national territory, to defend the sovereignty of the State and to protect the population from external harassment. On the basis of the principles of anti-colonialism and anti-imperialism and the principle of humanitarianism, the Indonesian Government and the people have the moral obligation to protect the people in the Territory of Timor so that the process of decolonization can be realized in accordance with the aspirations and wishes of the entire people of Portuguese Timor.<sup>72</sup>

At the United Nations, in December, Indonesia argued—making use of principles almost identical to Morocco's—that Timor "was situated at the heart of the Indonesian Archipelago," that the "population of Portuguese Timor . . . was of the same ethnic origin as the population in the Indonesian part . . ." and that the "450 years of division resulting from colonial domination had not diminished the close ties of blood and culture between the people of the Territory and their kin in Indonesian Timor. That geographical proximity and ethnical kinship were important reasons for Indonesia's concern about peace and stability in Por-

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69. *Id.* at 1.

70. *Id.* at 2.

71. *Id.*

72. *Id.* at 3.

tuguese Timor . . . ."<sup>73</sup> Indonesia also echoed Indian arguments used during its invasion of Bangladesh, claiming that military intervention was necessary to help large numbers of refugees—approximately 50,000 in the case of Timor—to return to their villages.<sup>74</sup>

Equipped with such claims of cultural manifest destiny and historic title, as in the Spanish Sahara, invaders from Indonesia moved massively against East Timor on the morning of December 7th. A heavy bombardment of Dili was followed by two months of heavy ground fighting in which the Indonesian army succeeded in eradicating, at least in the urban areas, most of the surprisingly stubborn resistance of FRETILIN.<sup>75</sup> In the course of this exercise, according to the Deputy Chairman of the territory's Indonesian-supported Provisional Government, about 60,000 persons—10% of the population—were killed.<sup>76</sup>

After rancorous debate in the Fourth Committee,<sup>77</sup> the General Assembly passed a resolution on December 12, 1975, by a vote of 72 to 10, with 43 abstentions, strongly deploring "the military intervention of the armed forces of Indonesia in Portuguese Timor," and calling upon Indonesia "to withdraw without delay . . . in order to enable the people of the Territory freely to exercise their right to self-determination and independence," while recommending to the Security Council "that it take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination."<sup>78</sup> The failure of 53 countries, including the United States, to support this resolution (most abstained), sent a clear signal to Indonesia that the U.N. lacked the political will to oppose their actions.<sup>79</sup>

73. U.N. Doc. A/C.4/SR.2180, at 3-4, Fourth Committee, December 3, 1975 (Mr. Anwar Sani).

74. *Id.* at 4.

75. The extent of Indonesian control was, as of April, 1976, a matter of conjecture. FRETILIN claimed control over more than 80% of the territory, which outside the urban areas is well suited for guerrilla warfare. U.N. Doc. S/PV.1908, at 16 (1976) (Mr. Jose Horta). FRETILIN also denied accounts that Indonesia had withdrawn some of its troops, insisting that troop levels had been increased. *Id.* at 13.

76. N.Y. Times, Feb. 15, 1976, at 11, col. 1.

77. The votes in the Fourth Committee on the draft resolution and amendments thereto are found in U.N. Doc. A/C.4/SR.2188 (1975).

78. G.A. Res. 3485, *supra* note 9.

79. The Indonesians were quick to point out the number of abstentions in the ensuing Security Council debates as an indication of support for their position. U.N. Doc. S/PV.1864, at 32 (1975) (Mr. Anwar Sani).

As the Indonesians consolidated their military position in the territory, the Security Council convened at Portugal's request to consider the issue. Lisbon accused Djakarta of "destroying FRETILIN by force," "of organizing and strengthening . . . parties favorable to the integration of Timor with Indonesia . . . placing those parties at the head of the administrative machinery; and of frightening the people in order to show them where the force lies and giving them a glimpse of the inevitable consequences of their refusal to accept that fact."<sup>80</sup> Indonesia reiterated its ethnic, geographic and humanitarian claims, while asserting that it had been acting in self-defense against the aggressive forces of FRETILIN which had been acting "in connivance" with "elements of the colonial administration" to achieve a *fait accompli*.<sup>81</sup> On December 22, a divided Council unanimously adopted a resolution which, in addition to reiterating the General Assembly's call on Indonesia to withdraw "without delay" from the territory and recognizing Portugal's continuing status "as administering power" with the obligation "to cooperate with the United Nations so as to enable the people of East Timor to exercise freely their right to self-determination," requested the Secretary-General "to send urgently a special representative to East Timor for the purpose of making an on-the-spot assessment of the existing situation and of establishing contact with all the parties in the Territory and all States concerned in order to insure the implementation of the present resolution. . . ."<sup>82</sup> The Security Council notably did not dust off even its low-level diplomatic sanctions under Chapter VII of the Charter, let alone economic or military collective measures on behalf of the right of the more than half a million Timor people to enjoy the same right accorded in the past two decades to more than half the membership of the U.N.

By the time the Security Council reconvened in April to consider the interim report of Special Representative Vittorio Winspeare-Guicciardi, the extent of the control exercised by the Provisional Government and Indonesian "volunteers" was uncertain. Guicciardi found that "[a]ny accurate assessment of the situation as a whole remains elusive,"<sup>83</sup> but that "it might be possible to build on the slender common assumption that the people of East Timor should be consulted on the future status of the Terri-

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80. *Id.* at 27. (Mr. Galvao Teles)

81. *Id.* at 34-35. (Mr. Anwar Sani)

82. S.C. Res. 384 (1975).

83. Resolution 384 Report, Annex, *supra* note 53, at 9.

tory."<sup>84</sup> Common ground, however, appeared to be illusory, as FRETILIN called for a one-man-one-vote referendum with a choice of independence under FRETILIN or integration into Indonesia, while the Indonesian-backed Provisional Government was carefully laying the groundwork for an "act of free choice" patterned after West Irian.<sup>85</sup>

After intense negotiations, the Council again called on Indonesia "to withdraw without further delay all its forces from the Territory," but fell far short of condemning Indonesia's apparent disregard of Resolution 384 (1975).<sup>86</sup> Even so, the U.S. abstained and both the Provisional Government and Indonesia rejected the resolution, the latter stating that it would "continue to be guided by the wishes of the people of East Timor while taking into account the realities prevailing in the Territory."<sup>87</sup> Djakarta has stated that "The majority of the people of Timor . . . have already demonstrated their strong desire to be reunited with the Indonesian people in the exercise of their right of self-determination"<sup>88</sup> thereby suggesting that consultations of any kind would merely seal the already determined fate of the territory.

*C. The Spanish Sahara and Portuguese Timor:  
Destabilizing Precedent*

From virtually every world order perspective, the outcomes of these two decolonization crises are highly dysfunctional. In both instances, large numbers of people have been killed or driven to become refugees. The unity of the Third World has been poisoned, badly damaging its ability to act in concert to press for such overridingly important common objectives as the new economic order.

From the perspective of international law, both cases are destabilizing precedents. The consequences were not slow in making themselves felt. Thus, in February, 1976, just as Morocco was

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84. *Id.* at 12.

85. *Id.* See also note 19 *supra*. According to press reports, a 37-member People's Assembly, meeting in Dili in early May, has already approved the integration of East Timor into the Republic of Indonesia. *N.Y. Times*, June 1, 1976, at 6, cols. 4-5.

86. S.C. Res. 389 (1976).

87. U.N. Doc. S/PV.1915, at 47 (1976) (Mr. Anwar Sani).

88. Letter from the Deputy Permanent Representative of Indonesia to the United Nations to the Secretary-General, Feb. 17, 1976, U.N. Doc. S/11986, Annex, at 1-2 (1976).



mopping up the Western Sahara and Indonesia was completing its subjugation of East Timor, President Amin of Uganda announced that his country had claims to large portions of Kenya and the Sudan on the ground that these areas had at one time been administered as part of Uganda.<sup>89</sup> There are numerous other such skeletons waiting to come out of the closet if the international "climate"—which has been appropriately hostile to such claims since the defeat of the forces of "Aryan manifest destiny" in 1945—becomes more hospitable. Almost all colonial boundaries are artificial creations in the sense that they do not neatly reflect ethnography or even the logic of topography. However, to reopen the question of the legitimacy of all recognized boundaries on the ground that they inaccurately reflect the configurations of ancient kingdoms, cut through tribes, or fail to conduce to irrigation, is surely an invitation to chaos, insecurity and war.

In an era which has seen a tripling of states admitted to membership in the community of nations, both equity and good order have been well-served by the principle of legitimacy that requires all members of the community to accept the *status quo* of existing boundaries—to "play them as they lie"—a principle most recently reasserted in the Helsinki agreement of 1975.<sup>90</sup> Similarly, the peaceful orderly transition to a decolonized world would have been far more difficult had not the norm of self-determination been recognized as the key to independence and legitimacy. Now, both precepts are under attack. In two areas in particular, Belize and French Somaliland, it is predictable that the rise of historic and ethnic-irredentist claims and the down-grading of self-determination and the sanctity of established boundaries is likely to lead to further disorder and injustice.

### III. THE PRECEDENTS APPLIED: DJIBOUTI AND BELIZE

#### A. *The Case of Djibouti*

Djibouti covers an area of 23,000 square kilometers, most of which is desert or semi-desert.<sup>91</sup> It is strategically situated so as to control access to the Red Sea from the Indian Ocean and is bor-

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89. The Times (London), February 17, 1976, at 7, col. 1; *Id.*, February 20, 1976, at 6, col. 1; *Id.*, February 25, 1976, at 7, col. 1.

90. The "Final Act" of the conference on Security and Cooperation in Europe, reprinted in 14 *Int'l. Legal Mat.* 1292, 1294-95 (1975).

91. Report of the Special Committee (1975), Annex, *supra* note 46, at 4.

dered by Ethiopia to the northwest and southwest and Somalia to the south. In 1967 the territory's population was 125,050. Of these, 58,240 were Issas, a Somali tribe, and 48,270 were Afars, a group with close connections across the border in Ethiopia. Of the Issas, almost half (28,430) were considered by the authorities to be "foreigners."<sup>92</sup>

The territory, with no known mineral resources and virtually no indigenous source of fresh water, has an economy almost entirely dependent on its port city of Djibouti and the railway which links it to the capital of Ethiopia. The reopening of the Suez Canal, however, should revive the importance of Djibouti's bunkering facilities and help the city to realize its potential as an international bankcenter.<sup>93</sup> In addition, Ethiopia, with its Eritrean port of Asmara rendered insecure by secessionist forces, increasingly perceives Djibouti as its last link with the sea.

In 1957, after years of compliance with the reporting requirements of article 73, France ceased to submit annual reports on Djibouti, unilaterally deciding that the territory had attained a full measure of self-government in accordance with Chapter XI of the U.N. Charter.<sup>94</sup> Soon after, by a vote of 8662 persons for and 2851 against, the people of the territory ratified the 1958 French Constitution, rejecting the independence that a negative vote would have given them.<sup>95</sup> Instead, the Territorial Assembly chose to retain the status of an Overseas Territory.<sup>96</sup> A further referendum in 1967, which occasioned violent rioting in Djibouti, found the population in favor of continuing that status, with an added measure of autonomy.<sup>97</sup>

92. *Id.* at 4-5. There were also 10,255 Europeans and assimilés, as well as 8,258 Arabs. *Id.* The 1973 U.N. Demographic Yearbook estimates the total population at 101,000. *Id.* at 5. The Somali-backed liberation movement disputes these figures, claiming that even the French concede the population is double the 1967 figure. U.N. Doc. A/C.4/SR.2168, Fourth Committee, at 13, November 14, 1975. (Mr. Awaze-FLCS Representative).

93. *Id.* at 16.

94. Letter from the French Ministry of Foreign Affairs dated 23 March 1959, addressed to the Secretary-General and transmitted to him by the Permanent Representative of France, 14 U.N. GAOR, Annexes, agenda item No. 36, at 2, U.N. Doc. A/4096 (1959).

95. Report of the Special Committee, 21 U.N. GAOR, Annexes, Addendum to agenda item No. 23, at 628, U.N. Doc. A/6300/Rev. I (1966).

96. *Id.*

97. Report of the Special Committee, 22 U.N. GAOR, Annexes, Addendum to agenda item No. 23 (Part III), at 4-5, U.N. Doc. A/6700/Rev. I (1967). In this referendum, 22,555 voted for and 14,666 voted against the following question:

The territorial government is led by the majority UPEF (Union et Progress Dans L'Ensemble Francais), which favors independence, but only if that independence is guaranteed by Ethiopia, Somalia and France.<sup>98</sup> The opposition in the Chamber of Deputies is the LPA (Ligue Populaire Africaine), which, in the past, favored a delay in the granting of independence, but now seeks to outflank the UPEF by calling for immediate and unconditional independence while characterizing French policy as one of delay and divisiveness.<sup>99</sup>

In addition to these two political parties, there are two liberation movements operating across the borders of the territory, both of them recognized and supported by the Organization of African Unity: the MLD (Mouvement de Libération de Djibouti) based in Diridawa, Ethiopia, and the FLCS (Front de Libération de la Côte des Somalis) based at Mogadiscio, Somalia.<sup>100</sup>

Given the rival interests of Ethiopia and Somalia, their support for opposing political forces within the territory, and the tribal animosity of the Afars and Issas, which has been partly institutionalized in party politics, it is not surprising that Djibouti has experienced a long history of violence. Most recently, on May 25 and 26, 1975, tribal clashes between the Afars and Issas took place in Djibouti. According to the report of the U.N. Special Committee, France reinforced the Djibouti garrison with 300 gendarmes who soon after fired into rioting crowds, killing 11 persons and wounding about 250.<sup>101</sup>

The role of the United Nations, in this as in the preceding cases of decolonization, has been to take and reassert annually,

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Do you wish the Territory to remain part of the French Republic with the new statute of government and administration which has already been outlined?

Id. at 4-6. No mention of independence appeared on the ballot.

Although some further reforms for the territory were proposed by the French in December, 1974, considerable authority continues to be exercised by the French state, particularly over the territory's external relations, immigration, shipping, postal services, telecommunications, defense, law and order, currency, foreign trade, citizenship, and judiciary. Under the new reforms, several of these powers, including direct control over police forces, were scheduled to be transferred to the locally-elected territorial authorities. Report of the Special Committee (1975), *supra* note 46, at 7.

98. Id. at 11-12.

99. U.N. Doc. A/C.4/SR.2168, Fourth Committee, at 19-26, November 14, 1975 (Mr. Ahmed Dini).

100. Report of the Special Committee (1975), *supra* note 46, at 13.

101. Id. at 13-14.

since 1966, a position reaffirming the "inalienable right of the people" to "self-determination and independence" and calling upon France "to ensure that the right of self-determination shall be freely expressed and exercised by the indigenous inhabitants of the Territory on the basis of universal adult suffrage and with full respect for human rights and fundamental freedoms . . ."<sup>102</sup> After rejecting the results of the 1967 referendum this was augmented by a demand that the French permit "the return of all refugees to the Territory," while the General Assembly also expressed regret that "the administering Power has not cooperated with the United Nations" in implementing "the right of the people to self-determination and independence."<sup>103</sup>

The U.N. General Assembly's commitment to a democratic referendum leading to independence was echoed by the Organization of African Unity's Assembly of Heads of State and Government which, beginning with the meeting of November 5-9, 1966, expressed its "fervent desire" that there be a free vote leading to independence and called on the people of the territory "to unite in confronting its destiny."<sup>104</sup> By 1975, however, the O.A.U.'s Council of Ministers had denounced the "obstinacy and arrogance" of the French government and stressed the need to "take up armed struggle," while pledging to "support . . . the Liberation Movements of the territory with all the material, moral and diplomatic assistance required for attaining their objectives."<sup>105</sup>

Gradually, the French position has moved towards granting the territory independence. On November 6, 1975, Mr. Olivier Stirn, the French Secretary of State for Overseas Territories, stated that the French government is not opposed to independence for Djibouti provided it is accompanied by "very serious guarantees" of the territory's integrity from Ethiopia and So-

102. G.A. Res. 2228, 21 U.N. GAOR Supp. 16, at 72, U.N. Doc. A/6316 (1966).

103. G.A. Res. 2356, 22 U.N. GAOR Supp. 16, at 55, U.N. Doc. A/6716 (1967).

104. O.A.U. Council Resolution CM/84(VII), 31 October to 4 November 1966, adopted by the O.A.U. Assembly of Heads of State and Government at the Third Ordinary Session, Addis Ababa, 5-9 November 1966.

105. O.A.U. Council Resolution CM/Res.431/Rev.1(XXV), 18-25 July 1975. See also Resolution I of the conference of Ministers for Foreign Affairs of Non-aligned Countries, Lima, Peru, 25-30 August 1975, which supports "immediate and unconditional independence" and calls upon "all states to renounce any claims that they may have to the so-called French Somaliland (Djibouti)," in U.N. Doc. A/10217, Annex 1, at 2 (1975).

malia.<sup>106</sup> The French government made this position official on December 31, 1975, when it issued an official declaration announcing that Djibouti would shortly "accede to international sovereignty," and stating that negotiations would proceed with the hope of concluding before the June 1976 O.A.U. meeting.<sup>107</sup> The French decision also came in response to Resolution 3480 (XXX) which called upon "all States to renounce forthwith any and all claims to the Territory and to declare null and void any and all acts asserting such claims," and again called upon France "to grant immediate and unconditional independence."<sup>108</sup>

Ethiopia appears willing to renounce its territorial claims. In a statement of July 29, 1975, before the Twelfth Ordinary Session of the Assembly of Heads of State and Government of the O.A.U., General Tefferi Bante, Chairman of the Ethiopian Revolutionary Junta, stated that his country believed that the future destiny of the Territory should be based on the free choice of the people.<sup>109</sup> He added that if they chose independence Ethiopia would accept that decision and would be happy to live with an independent neighbor whose sovereignty would be assured by its membership in the O.A.U. While asserting that history, geography and continuance of historical interaction had created a mutuality of interest between the Territory and his country, Bante recognized that whatever historical rights Ethiopia might have had in this area were overridden by the right of the people to independence.<sup>110</sup>

The Somalian position is somewhat less clear. In July, 1970, Major General Mohamed Siad Barre, President of the Somalia Supreme Revolutionary Council, pointed out that "his country had renounced its claim to French Somaliland,"<sup>111</sup> an official position Somalia seemingly continues to maintain.<sup>112</sup> Nevertheless,

106. Report of the Special Committee (1975), *supra* note 46, at 11.

107. N.Y. Times, Jan. 1, 1976, at 2, col. 1. As this article goes to press, it appears that France intends to hold a referendum in the fall of 1976 as a prelude to granting the territory its independence in 1977. *Id.*, June 6, 1976, at 14, col. 1.

108. G.A. Res. 3480, U.N. Doc. GA/5438, at 259 (1975) (Press Release).

109. Report of the Special Committee (1975), *supra* note 46, at 10.

110. *Id.* at 10-11.

111. Report of the Special Committee, 25 U.N. GAOR Supp. 23, at 61, U.N. Doc. A/8023/Rev.1 (1970).

112. See Note Verbale dated 3 March 1976 from the charge d'affaires, A.I. of the Permanent Mission of Somalia to the United Nations addressed to the Secretary-General, U.N. Doc. S/12001, Annex (1976), which is the most recent exposition of the Somalian position. [hereinafter "Note Verbale"]

Barre and his Minister of Foreign Affairs have since made it clear that self-determination for the territory should include repatriation of thousands of refugees residing in Somalia as well as the extension of full rights to those thousands of Issas within the territory who have been classified as foreigners by the French and have therefore not been entitled to vote in past elections.<sup>113</sup> As was the case in the Western Sahara, the problem of determining who is entitled to participate in an act of self-determination is a real one, but one capable of resolution.<sup>114</sup> The solution adumbrated by Somalian spokesmen, though, had overtones of a new "Green March." By the end of the debate on the Sahara case in the Fourth Committee, the Somali representative warned that his country had the option to pursue exactly the same sort of historic claim Morocco and Mauritania had successfully asserted to the Western Sahara. Ominously, he added that Somalia supports "the legitimate aspirations of any and all peoples who were so divided against their will to regain their national unity," although he still believed "that such aspirations must be achieved through the exercise of the principle of the right of self-determination."<sup>115</sup>

Somalian assurances that they will safeguard the right of self-determination for the people of the territory have a somewhat hollow ring in light of the Somalian Constitution which calls for "the union of Somali territories."<sup>116</sup> In addition, the Somalian Foreign Minister has recently been quoted as saying that his government "has the objective of reestablishing the unity of the Somali people. France is occupying part of our Territory. We want to bring about this unity by peaceful means. In case that doesn't work, there are other means."<sup>117</sup>

Ethiopian fears have understandably not been assuaged by Somalia's apparent official support for self-determination. The

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113. Report of the Special Committee (1975), *supra* note 46, at 9-10; Note Verbale, *supra* note 112, at 2.

114. Visiting Mission, *supra* note 11, at 28.

115. U.N. Doc. A/C.4/SR.2176, Fourth Committee, at 5, December 5, 1975 (Mr. Hussein).

116. Constitution of Somalia, July 1, 1960, First Part, article 6(4), in 1 Peaslee, *Constitutions of Nations* 776 at 778 (rev. 3rd ed., 1970). Article 6(4) does, however, mention only the use of "legal and peaceful means" to achieve this objective. *Id.*

117. Quoted in U.N. Doc. A/C.4/SR.2172, Fourth Committee, at 27-28, November 28, 1975 (Mr. Ibrahim).

Addis authorities perceived, in the renewed call for the return of "refugees" to the territory that is part of the 1975 General Assembly Resolution, a Somali ploy to alter the demography of the territory and thus predetermine the outcome of a self-determination plebiscite in favor of union with a Greater Somalia.<sup>118</sup> For this reason, Ethiopia stood alone against that resolution at the committee stage, although it voted with the majority in the plenary session.<sup>119</sup> Throughout the discussion, however, Ethiopia has made it clear that, refugees or no refugees, referendum or no referendum, it would never permit a union between Somalia and the Territory of the Afars and the Issas, apparently envisaging an international status comparable to that of Austria and Cyprus, both of which are independent states prohibited from "anschluss" or "enosis."<sup>120</sup>

In sum, while it is perfectly possible that France, Ethiopia and Somalia, aided by the U.N. and the O.A.U., can work out a peaceful transition to independence for French Somaliland, the normative structure within which such a transition would normally have occurred has been badly cracked by events in the Spanish Sahara and East Timor. Those two malevolent precedents point to a different scenario in which either Somalia or Ethiopia, or both, encourage their clients in the colony to create troubles that would "justify" an intervention. Such a maneuver would be supported by a verbal persiflage of "historic claims," "ethnic ties," "humanitarian rescue" and "concern for facilitating the return of refugees to their homes." Ethiopia, using Afars from its side of the border, or Somalia, utilizing its own Issas, could stage a "peaceful liberation and reunification march." Before the Western Sahara and Timor crises—as long as the norm of democratic self-determination within recognized boundaries, under U.N. supervision, remained relatively universal—such defiance of international due process would have been unthinkable. It has now become eminently thinkable.

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118. U.N. Doc. A/C.4/SR.2183, Fourth Committee, at 5-7, December 12, 1975.

119. For the vote in the Fourth Committee see Report of the Fourth Committee, U.N. Doc. A/10427 at para. 69 (1975). For the vote in the General Assembly see U.N. Doc. A/PV.2437, at 64 (1975).

120. Austrian State Treaty, May 15, 1955, 6 U.S.T. 2369, T.I.A.S. No. 3298; Treaty of Guarantee between the United Kingdom of Great Britain and Northern Ireland, Greece, Turkey and Cyprus, August 16, 1960, 382 U.N.T.S. 3.

*B. The Quest for Belize*

Belize, formerly known as British Honduras,<sup>121</sup> is a territory of slightly under 9,000 square miles. Its population in 1970 was 119,863, of whom more than 30% lived in Belize City.<sup>122</sup> Since 1964, the colony has been domestically self-governing, with a Premier, cabinet, and bicameral legislature, consisting of a Senate and a House of Representatives exercising exclusive jurisdiction over all matters except defense, external affairs, internal security and the public (civil) service. The British Crown is represented by a Governor, who acts on the advice of the British Government in relation to those matters not yet within the jurisdiction of the Government of Belize.<sup>123</sup>

There are two major political parties in the territory: PUP (Peoples United Party), founded in 1950 by Mr. George Price, who continues to be its leader and is the Premier of the colony, and the opposition UDP (United Democratic Party), a coalition established in 1973 by three opposition groups.<sup>124</sup> In late 1973 a regionally-based party, CUF (Corozal United Front) was founded and associated itself with the opposition party.<sup>125</sup> Elections for the 18 seats in the House of Representatives, conducted by universal suffrage, were most recently held on October 30, 1974. PUP, which had held 17 seats in the previous legislature, was returned with a reduced majority of 12 seats, its lowest total in 20 years. The remaining six seats went to the UDP coalition.<sup>126</sup>

The two parties differed sharply in the 1974 election campaign over the timing of the Territory's independence, with PUP, in its "Manifesto for the Independent Belize," calling for the speedy granting of independence coupled with suitable security arrangements to safeguard it, while the UDP averred that the Territory was not yet ready for independence.<sup>127</sup> They are

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121. In 1973 the House of Representatives and Senate in the territory enacted legislation changing its name to Belize. See Report of the Special Committee, 28 U.N. GAOR, Supp. 23, Vol. V, at 198, U.N. Doc. A/9023/Rev.1 (1973).

122. Report of the Special Committee, 27 U.N. GAOR Supp. 23, Vol. V, at 160, U.N. Doc. A/8723/Rev.1 (1972). The population consists mainly of Creoles, American Indians (Mayas) and Caribs. Report of the Special Committee, U.N. Doc. A/10023/Add.8 (Part III), Annex, at 17 (1975).

123. *Id.* at 49.

124. Report of the Special Committee (1975), Annex, *supra* note 122, at 18.

125. *Id.*

126. *Id.*

127. *Id.*



united, however, in their opposition to union with Guatemala. The perception of such a threat arises from Guatemala's longtime assertion of a historic claim to the territory, based on treaties and events of more than a century ago.

Initial English settlement in the territory was by former buccaneers who turned to woodcutting in Belize's rich forests to supply nascent English industry.<sup>128</sup> A series of 18th century treaties between Spain and England explicitly covered these settlements. Spain challenged the legality of the settlements throughout the century. The treaties appear to define British rights to the territory in limited functional, rather than in sovereign, terms. Thus, for example, the Treaty of Paris of 1763 calls for Britain to demolish all its fortifications in the Bay of Honduras, in return for which the Spanish Crown undertakes to protect British subjects residing in the area "in their occupation of cutting, loading, and carrying logwood . . ."<sup>129</sup> The treaty refers to the area as "the Territory of Spain."<sup>130</sup> In 1779 the Spanish destroyed the settlement, only to have the British return in 1783.<sup>131</sup> After the "battle" of St. George's Key in 1798, however, the settlers, having driven off the Spaniards, were never again seriously challenged.<sup>132</sup> Even so, in the Peace of Amiens,<sup>133</sup> Britain purported to return to France and its Allies, including Spain, "all the possessions and colonies which belonged to them respectively, and which had been occupied or conquered by the British forces," thereby reconstituting the *status quo ante*.<sup>134</sup>

The final instrument of importance to the status of Belize is the Treaty of 1859 between Great Britain and Guatemala which,

128. An excellent short summary of Belize's early history and of the relevant documents appears in Kunz, *Guatemala vs. Great Britain: In re Belize*, 44 *Amer. J. Int'l. L.* 383 (1946). [hereinafter: "Kunz"]

129. 1 *British and Foreign State Papers* 646, art. 17.

130. *Id.* See also to similar effect *The Treaty of Versailles*, Sept. 3, 1783, 1 *British and Foreign State Papers* 649, art. 6; *The Convention of London*, July 14, 1786, 1 *British and Foreign State Papers* 656.

131. Kunz, *supra* note 128, at 384.

132. *Id.* See also W. Bianchi, *Belize*, 34-35 (1959). Accounts of the engagement vary, but it appears that the action lasted only a few hours. *Id.* at 35.

133. *Definitive Treaty of Peace between France, Great Britain, Spain and the Batavian Republic*, signed at Amiens, March 27, 1802, reprinted in 56 Parry (ed.), *The Consolidated Treaty Series* 289 (1969).

134. *Correspondence between Great Britain and France*, presented by His Majesty's command to Parliament, May 18, 1803, art. 3., cited in Bianchi, *supra* note 129, at 36. See also Clegern, *New Light on the Belize Dispute*, 52 *Amer. J. Int'l L.* 280 (1958) [hereinafter "Clegern"], in which the author claims that documents of the British Foreign Office undermine a claim based on conquest.

by this time, had become independent of Spain and claimed to be the successor to Spanish rights in the region. This treaty establishes an agreed boundary between "the British Settlements and Possessions in the Bay of Honduras" and the Republic of Guatemala.<sup>135</sup> It declares that "all the territory to the north and east of the line of boundary above described, belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala"<sup>136</sup>—the former virtually identical to present day Belize.

To the British, this treaty is definitive, regardless of whether the earlier Spanish treaties had assigned title to Britain or to Spain, or whether Guatemala may be considered the successor to former Spanish claims. The Guatemalans, however, view things differently. Under Article 7 of the same treaty, the parties also "mutually agree conjointly to use their best efforts," to establish either "a cart-road" or, by "employing the rivers, or both" to establish commercial communications between Belize and Guatemala City.<sup>137</sup> The Guatemalan government maintains that Britain has failed in its obligation to play its part in this vague undertaking.<sup>138</sup> For the British, as a boundary agreement, the treaty was dispositive and therefore not subject to being voided on the basis of the failure of some subsequent, collateral joint venture.<sup>139</sup>

Intermittently in the years since 1859, the Guatemalan claim has been pursued with considerable vigor. These territorial aspirations are clearly set forth in the Guatemalan Constitution. Article 1 of its final provisions states "Belize is declared to be a part of the territory of Guatemala. The executive must undertake all steps that would tend to settle its position in accordance with the national interest."<sup>140</sup>

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135. Treaty between Great Britain and Guatemala, April 30, 1859, 49 British and Foreign State Papers 7, art. 1.

136. *Id.*

137. *Id.*, art. 7.

138. Guatemala also points to certain legal defects accompanying the signing and ratification of the agreement, but whatever defects may have existed appear to have been cured by the prolonged recognition and subsequent approval of the treaty by the Guatemala government. Bianchi, *supra* note 132, at 62-63.

139. See generally, Clegern, *supra* note 134. In 1863 a second treaty was signed reducing Britain's obligations under article 7 to payment of £ 50,000. This treaty was never ratified. Kunz, *supra* note 128, at 385.

140. Constitution of the Republic of Guatemala, September 15, 1965, Title X, art. 1, in 4 Peaslee, *Constitutions of Nations* 564 at 623 (rev. 3rd ed., 1970).

Guatemala has managed to enroll the majority of the states of the Americas in its cause. Thus, at the Second Meeting of the Ministers of Foreign Affairs of the American Republics in 1940, it was resolved "to express the keen desire and wishes of the American countries in favor of a just, peaceful and prompt solution of the question of Belize between Guatemala and Great Britain."<sup>141</sup>

Although Guatemalan claims were necessarily muted during the war, it continued to pursue its historic claim at the newly formed United Nations. Even during the San Francisco conference to draft the United Nations Charter, while it was being agreed that members of the new organization were to be encouraged to convert their colonies into U.N. trust territories, Guatemala proposed an amendment to the effect that colonies "which are at present the object of litigation among Allied Nations are expressly excluded from the Trusteeship System."<sup>142</sup> Although this so-called Belize clause was not included in the text of the U.N. Charter, the Drafting Committee did record Guatemala's "express reservation" to the effect that Belize was not to be placed under a system which transferred the territory's title to the United Nations and which could result in its becoming independent.<sup>143</sup>

Despite Guatemala's continuing quest for Belize, there have also been prolonged periods of quiescence during which the Republic appeared to accept the validity of British title. For example, in 1931, commissioners appointed by the governments of Guatemala and British Honduras "to establish the permanent boundary marks" along parts of the joint border were able to agree to erect concrete monuments bearing two copper plates marked "Guatemala" and "British Honduras" at several key places.<sup>144</sup>

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141. U.S. Dept. of State Press Release No. 364 (August 3, 1940) in Carnegie Endowment for International Peace, *International Conferences of American States* 363 (First Supp. 1933-1940). After the war, at the Tenth Inter-American Conference held in Caracas, Venezuela, in 1954, Guatemala won an exemption for "territories that are the subject of litigation or claim between extracontinental countries and some American Republics" from a resolution calling on extracontinental countries to comply with U.N. Charter provisions giving colonial peoples the right to self-determination. Report of the U.S. Delegation to the Tenth Inter-American Conference, U.S. Dept. of State, Pub. No. 5692, *International Organization and Conference Series II, American Republics*, Appendix B, at 161 (1955).

142. Doc. 386, II/4/15, 10 U.N.C.I.O. Docs. 463 (1945), amended in Doc. 405, II/4/15(1), 10 U.N.C.I.O. Docs. 465 (1945).

143. Doc. 1115, II/4/44(1)(a), 10 U.N.C.I.O. Docs. 607, at 610 (1945).

144. Exchange of Notes between the United Kingdom and Guatemala re-

In 1946 it briefly appeared as if the issue could be resolved on the basis of a British offer to have the International Court of Justice decide the problem. The Guatemalan government declined, noting later that "it deeply appreciated the good intentions of the United Kingdom Government and quite realized the sacrifice it meant for a great power to submit itself to an international judgment," but that it was unwilling to have the Court give "a merely legalistic decision . . . [on] the interpretation of a treaty which, owing to the failure of the United Kingdom to comply with an important clause, the Guatemalan Government had been obliged to denounce and to declare void and wholly invalid." Guatemala instead "proposed that the Court should be empowered to judge *ex aequo et bono*, taking into consideration all the aspects of the dispute and not the purely juridical aspect alone."<sup>145</sup> The British government rejected that proposal.

Another attempt to resolve the problem was made between 1965 and 1968 when Guatemala and the United Kingdom agreed to invite the United States to appoint a mediator. On November 18, 1965, the State Department announced the Presidential nomination of Bethuel M. Webster for that post, and two and one-half years later his proposal was submitted to the parties in the form of a draft treaty.<sup>146</sup> It envisaged independence for Belize by December 31, 1970,<sup>147</sup> in return for which Guatemala would receive "one or more transit routes" through the new state for the unrestricted use of Guatemalan imports and exports, together with a tariff-free port area in Belize City.<sup>148</sup> A joint authority was to regulate certain common services and supervise freedom of travel, equal protection of personal and property rights of the citizens of one country in the territory of the other, and the integration of transportation and communication facilities.<sup>149</sup> Finally, there were provisions for consultation and cooperation in matters of external affairs and joint defense arrangements including the

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specting the Boundary between British Honduras and Guatemala. Guatemala, August 25-26, 1931 (1932), Gr. Brit. T.S. No. 9 (Cmd. 4050) at \_\_\_\_\_, reprinted in 134 British and Foreign State Papers 270.

145. 4 U.N. GAOR 114, Fourth Comm., at 126 (1949).

146. Draft Treaty Between the United Kingdom of Great Britain and Northern Ireland and the Republic of Guatemala Relating to the Resolution of the Dispute Over British Honduras (Belize), (1968) British Honduras Gazette Extraordinary 213, reprinted in 7 Int'l Legal Mat. 626 (1968).

147. *Id.*, art. 1.

148. *Id.*, arts. 2, 3.

149. *Id.*, art. 9.

use by the Guatemalan navy of Belize port facilities. Belize would enter the Central American community and rely on the Inter-American treaty of Reciprocal Assistance (Rio Treaty) of 1947 for collective defense rather than on a bilateral agreement with Britain.<sup>150</sup>

Both the PUP and the opposition in Belize rejected the Webster Report, a position supported by street demonstrations in Belize City. Having at first agreed to give the Report serious study, the British foreign secretary on May 20, 1968 maintained that "the dispute with Guatemala will not be settled on a basis which was not in accordance with the wishes of British Honduras."<sup>151</sup>

Resuming the quest for complete independence, Premier George Price succinctly reaffirmed the Belizean position: "[W]hat we want above all is an unequivocal assurance from the United Kingdom that they will guarantee the consequences of the United Nations Charter in respect of our people's right to determine their independence."<sup>152</sup> He also indicated that he might consider a multilateral pact, possibly with the United States and Canada, if Britain could not see her way to give a unilateral guarantee of his country's independence.<sup>153</sup> Neither Britain nor the U.S. nor Canada, however, have appeared anxious to give Belize a blanket commitment of support after independence.

At the beginning of 1972, relations between Britain and Guatemala deteriorated sharply with the arrival of 3,000 British servicemen and five major naval units to support the contingent of 250 men that made up the regular force in British Honduras. Guatemala labeled this show of force "gunboat diplomacy,"<sup>154</sup> and on January 31st the Inter-American Juridical Committee of the O.A.S. condemned the exercises being carried out by the U.K. as a threat to the peace and security of the continent.<sup>155</sup> Britain thereupon proposed that an observer from the O.A.S. be sent to the colony to verify the number of troops, type of equipment and activities of the British forces. Premier Price immediately declared that such action could not be used as a precedent for any action

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150. *Id.*, arts. 13, 14.

151. Report of the Special Committee, 23 U.N. GAOR, Annexes, Addendum to agenda item No. 23, at 360, U.N. Doc. A/7200/Rev. 1 (1968).

152. Report of the Special Committee, 24 U.N. GAOR Supp. 23, Vol. IV, at 222, U.N. Doc. A/7623/Rev.1 (1969).

153. *Id.*

154. Report of the Special Committee, 27 U.N. GAOR, Supp. 23, Vol. V, at 51, U.N. Doc. A/8723/Rev.1 (1972).

155. *Id.*

by the O.A.S. on the dispute between Guatemala and the United Kingdom.<sup>156</sup> After extensive on-site inspection the observer, Major General Alvaro Valencia Tovar of Colombia, reported that the United Kingdom troops were "fundamentally of a defensive nature," with a capacity for "local security type operations rather than for regular combat."<sup>157</sup>

Faced with the intractable Guatemalan position, the British government appears to have decided on a policy of *petit pas* which would give Belize many of the advantages of functional independence without its formal international legal trappings and complications. For instance, in 1971 British Honduras became the twelfth member of the CARIFTA (Caribbean Free Trade Association).<sup>158</sup> In 1973 the CARIFTA governments signed the Georgetown Accord which expands the Free Trade Association into a Caribbean Common Market with a common external tariff and a Caribbean Community with a Secretariat, as well as a number of other common institutions of economic development and regulation.<sup>159</sup>

In 1974 Premier Price signed the treaty under which Belize became a member of CARICOM (the Caribbean Community). The British government authorized the Premier to sign the treaty and to represent Belize in CARICOM's organs in the same manner as the Heads of Government of the independent member states, providing only that this power be exercised in such a way as to ensure that CARICOM does not enter into any treaty or any other international engagement affecting Belize nor make any foreign policy decisions without the prior knowledge and approval of the United Kingdom government.<sup>160</sup> The government of Guatemala greeted these developments by reiterating its opposition to "any change in the legal and political status of Belize without a prior and complete settlement of the problem of the rights of Guatemala over that territory."<sup>161</sup>

Increasingly, the issue of Belize has become a subject of heated exchanges in United Nations debates, both in the General Assembly and in the Security Council. The anglophonic Carib-

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156. *Id.* at 164.

157. *Id.*

158. *Id.* at 165.

159. Guyana Ministry of Foreign Affairs, *The Georgetown Accord, The Treaty of Chaguaramas and Related Documents 7-10* (1973).

160. Report of the Special Committee, U.N. Doc. A/9623/Add.6 (Part 11), at 21 (1974).

161. 27 U.N. GAOR 2049, at 3 (1972).

bean countries rallied to the cause of self-determination for Belize,<sup>162</sup> while Guatemala countered that, having been "attacked," it was engaging in "a tenacious struggle to regain part of its territory,"<sup>163</sup> and that "Spanish-speaking Latin America, too, have joined us in our just claims . . . ."<sup>164</sup> As for the right of self-determination, Guatemala argued—exactly as did Morocco in the Spanish Sahara case—that this principle was inapplicable in view of Guatemala's historic claims. This, it contended, had been recognized by Paragraph 6 of Resolution 1514, which states:

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.<sup>165</sup>

In the 1975 General Assembly session, Guatemala displayed a new urgency.<sup>166</sup> Its Foreign Minister, Sr. Molina Orantes, spoke

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162. During the Security Council's meeting in Panama, in 1973, the Foreign Minister of Guyana said that his country "stands full square behind the right of Belize to self-determination—to separate existence as an independent State guaranteed of its sovereignty and its territorial integrity," but noted that for Belize "the prospect of independence is clouded over by the danger of total absorption. What should be the exhilaration of freedom could well become a smothering at birth. We cannot speak of colonialism in Latin America and rightly call for its extirpation while shutting our eyes to this cruel reality that serves mainly to perpetuate it." 28 U.N. SCOR 1696th meeting 37 (1973). Jamaica similarly invited the Security Council to take note of "a fear founded on substantial grounds for the security and territorial integrity of their country" by the people of Belize and "to consider what steps can be taken to safeguard the right of these people to self-determination." 28 U.N. SCOR 1698th meeting 7 (1973). So, too, the Foreign Minister of Trinidad and Tobago supported the "legitimate aspirations of the people of British Honduras to exercise their inalienable right to self-determination and independence. . . . Through no fault of their own, through none of their contriving, through the passage of time they have developed a consciousness of themselves as a community separate and distinct from all others in the world, living on territory with known and defined boundaries. What is at stake for this community is whether or not it will be able to live in a State of its choice in peaceful and friendly cooperation with all its neighbors. The question is about the right of people to have the rights which we have and which justify us all in sitting around this table." 28 U.N. SCOR, 1699th meeting 11 (1973).

163. 28 U.N. SCOR, 1698th meeting 51 (1973).

164. *Id.* at 52.

165. G.A. Res. 1514, *supra* note 6.

166. During the same period, as was the case in Spanish Sahara and East Timor, the stakes were beginning to be raised by a growing awareness on the part of the states concerned that the dispute involved more than a small underdeveloped territory. As the Law of the Seas Conference began to shape new rules, it became clear that a 200-mile economic zone was at stake as well as title to

of "the continued existence of foreign enclaves, which infringe on the territorial integrity and sovereignty of States," and described Belize as one of the "occupied Territories" together with the Falkland Islands, Gibraltar and the Panama Canal.<sup>167</sup> Stressing historic ties dating back to before Columbus, when Guatemala and Belize were part of the Mayan empire, he emphatically demanded the "return" of the territory.<sup>168</sup> The 1859 treaty was swept aside because it had been negotiated "under coercion" and in any case had been declared void in 1946 by the Guatemalan Congress.<sup>169</sup>

Somewhat later in the debate, Guatemala further emulated the Moroccan and Mauritanian arguments during the parallel debate on the Sahara, declaring that

Belize was not *terra nullius* when the first British subjects arrived. On the contrary, in that Territory there was an indigenous population which was forced to flee in order not to be wiped out or subjected to slavery. A considerable number of them decided to live on the periphery, but their presence as the legitimate inhabitants of the area cannot be erased merely by usurpation . . . . Tens of Thousands of indigenous Mayas and Kekchies live in Belize suffering oppression.<sup>170</sup>

The apparent unwillingness of the "oppressed" Belizeans to be "liberated" by their neighbors was attributed to economic pressures and the stifling effect of the mass media.<sup>171</sup> Should the Belizeans fail to see the light, the Guatemalans made their intentions clear:

If our Belezian compatriots . . . led by their secessionist enthusiasm, should pretend to adopt unilateral initiatives which could seriously affect our territorial integrity and offend Guatemalan dignity, . . . in that case they would force us to show them, very much against our will, that law is more important than peace.<sup>172</sup>

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a continental shelf which, off Belize in the Gulf of Honduras, is comparatively wide. By the early 1970's, three companies held Belizean oil exploration and prospecting licenses covering the whole off-shore region of the territory with an area of almost three million acres. Report of the Special Committee (1972), *supra* note 154, at 166.

167. U.N. Doc. A/PV.2372, at 28-30, October 2, 1975.

168. *Id.* at 31.

169. *Id.* at 32.

170. U.N. Doc. A/PV.2431, at 37, 38-40, December 8, 1975 (Mr. Malonado Aguirre).

171. *Id.*

172. *Id.* at 41.



Premier George Price refuted the Guatemalan position in the Fourth Committee, noting that if Guatemala set itself up as the only legitimate heir to the Mayan empire it would also lay claim to parts of Mexico and Honduras.<sup>173</sup> Guatemala, he said, was "in some atavistic quest of an ancient hegemony" and was resorting to "absurd and unkind" doctrines about "a transplanted population" having "no rights to the land which it had occupied exclusively for centuries."<sup>174</sup> Making the obvious point that the majority of American nations were made up of transplanted populations, Price asked whether "the transplanted people of Spain in Guatemala and other Latin American countries had more rights than the transplanted peoples of Africa and Asia."<sup>175</sup> Price also ridiculed the notion that Britain's failure to build a cart-road as stipulated in the treaty of 1859 should, 100 years later, have the effect of denying a country its independence.<sup>176</sup>

During the 1975 session of the General Assembly, the Fourth Committee considered a variety of resolutions dealing with the matter. Thirteen Latin American countries, including all those of Central America and Columbia, Chile, Bolivia, Uruguay, Ecuador and Paraguay, introduced a resolution inviting Guatemala and Britain "to continue their negotiations without delay in order to find a peaceful solution to the problem" in accordance with the Charter and Resolution 1514.<sup>177</sup> This resolution was rejected in committee by a vote of 62-22, with 41 abstentions.<sup>178</sup> Another resolution, sponsored primarily by African and Asian nations, but joined by Australia, Austria, Canada, Malta, New Zealand, Norway, Sweden, Yugoslavia and, of course, Great Britain, was ultimately approved by the Committee and General Assembly and reaffirmed "the inalienable right of the people of Belize to self-determination and independence" and declared "that the inviolability and territorial integrity of Belize must be preserved . . ."<sup>179</sup> While the resolution called on Britain and Guatemala "acting in close consultation with the government of Belize" to continue the negotiations, it stipulated that their purpose should be "to remove

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173. U.N. Doc. A/C.4/SR.2162, at 6, November 7, 1975.

174. *Id.*

175. *Id.*

176. *Id.* at 9.

177. Report of the Fourth Committee, *supra* note 119, at 12.

178. *Id.* at 13. Significantly, all states voting in favor of the resolution were Latin-American with the notable exceptions of Morocco and Israel. Somalia and Ethiopia voted against the resolution while Indonesia abstained.

179. G.A. Res. 3432, U.N. Doc. GA/5438, at 249 (1975) (Press Release).

such obstacles as have hitherto prevented the people of Belize from exercising freely and without fear their inalienable right to self-determination and independence . . . ."<sup>180</sup> In the General Assembly plenary session, this resolution was adopted by 110 votes to 9, with 16 abstentions.<sup>181</sup> This time, only six Central American republics (including the Dominican Republic) voted against, joined by Paraguay, Uruguay and, of course, Morocco. The abstainers consisted of the larger nations of Latin America unenthusiastically fulfilling an obligation of regional solidarity, Israel repaying its debt to Central America for past support on other issues, and Mauritania making a gesture towards consistency but unwilling to go all the way into isolation with Morocco.

Such an overwhelming show of support for the concept of self-determination against assertions of historic title would appear to be definitive. However, as the cases of the Western Sahara, Timor and even Djibouti have made clear, in practice General Assembly resolutions propose but do not dispose. Indeed, the Guatemalan representative stated that his country would refuse to participate in the voting on Belize because the U.N. action "interfered with the legal process of the negotiations [with Britain] and prejudged the dispute." It "implied an attempt to disrupt the territorial integrity of Guatemala" and exceeded the competence of the international organization.<sup>182</sup>

The debates in the General Assembly, together with the deployment of Guatemalan troops along the Belize frontier in November, 1975, led to another dispatch of British reinforcements, including land and naval units,<sup>183</sup> making compromise less likely. Neither was a solution achieved by a Guatemalan proposal to annex only the southern half of the country—the part thought to be rich in oil—in return for permitting the rest to achieve independence.<sup>184</sup> By the end of November, however, the two countries had agreed that "wide ranging" negotiations would resume in New Orleans by the following February. There is as yet no sign, however, of any fundamental change in the respective positions of the parties.

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180. *Id.*

181. U.N. Doc. A/PV.2431, at 84-85, December 8, 1975.

182. U.N. Doc. A/C.4/SR.2173, Fourth Committee, at 16, November 21, 1975 (Mr. Skinner Klee).

183. *The Times* (London), Nov. 6, 1975 at 1, col. 4; *Id.*, Nov. 7, 1975 at 10, col. 5; *Id.*, Nov. 13, 1975 at 7, col. 2.

184. *Economist*, Nov. 15, 1975 at 68. The British rejected the Guatemalan proposal.

It is highly unlikely that Guatemala would attempt an invasion of Belize while it remains a British colony, and Britain has repeatedly promised that it would not abandon its colony to a fate comparable to that of the Spanish Sahara or East Timor. Nevertheless, Guatemala's threat to use force, if necessary, to give effect to its claims of historic title has been sufficiently credible to prevent Belize from taking the last step to independence, on the edge of which it has been poised for over twelve years.

C. *Synthesis of Spanish Sahara, Eastern Timor, Djibouti, and Belize*

In each of these four cases, neighboring states with implicit or explicit designs on a small colony have made essentially similar assertions to justify the denial of self-determination to the inhabitants of those territories. These assertions are a compound of the following increasingly familiar ingredients: (1) that the colony, before being colonized, was not *terra nullius* but was a part of an earlier, larger empire which also included the neighboring state and to which the neighboring state had become the legal successor; (2) that the ethnic composition of the colony and of the neighboring state is essentially identical or that there are strong socio-cultural affinities; (3) that geography and topography preordain union between the colony and its neighbor; and (4) that the apparent opposition of the people of the colony to unification with their neighbor and their "secessionist" proclivities are the result of the machinations and conditioning of the colonial power which thereby hopes to keep indirect control through the creation of a weak puppet state.

The advisory opinion of the International Court of Justice in the Western Sahara case strongly refutes each of these contentions and underscores the legal pre-eminence of the right of self-determination as set out in the U.N. Charter, 20 years of U.N. practice and Resolution 1514.

In the General Assembly, however, Resolution 1514 is cited as frequently against as for the proposition that these small territories have a right to self-determination. During the debate on this seminal resolution, Guatemala had offered an amendment stating: "The principle of self-determination of peoples may in no case impair the right of territorial integrity of any State or its right to the recovery of territory."<sup>185</sup> Various sponsors of the draft

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185. 15 U.N. GAOR, Annexes, agenda item No. 87, at 7, U.N. Doc. A/L.325 (1960).

which became Resolution 1514 pointed out, however, that the concern of Guatemala was already met by paragraph 6 of the draft which reserves the position that self-determination may not be used to interfere with the territorial integrity of states.<sup>186</sup>

The debates are unclear as to the intended coverage of the paragraph 6 exception to the right of self-determination. Jordan, for example, believed that "[t]he usurpation of a part of the Arab territory of Palestine by the joint aggression of colonialism and Zionism" constituted an example of a situation where the right to recover territorial integrity must take priority over self-determination of the peoples in the territory.<sup>187</sup> Similarly, Indonesia saw paragraph 6 as an invitation to absorb the Dutch colony of Western New Guinea (West Irian) regardless of the preferences of the inhabitants. The Indonesian representative assured Guatemala that "the idea expressed in the Guatemalan amendment is already fully expressed in paragraph 6 of our draft resolution, and . . . that the territories and peoples he had in mind have been taken into consideration in our paragraph 6."<sup>188</sup> This makes all the more poignant Indonesia's abandonment of the Guatemalan case during the vote on the Belize resolution in the 30th session of the General Assembly. Morocco, too, emphasized its understanding that paragraph 6 was intended to counteract the "silent tactics of the viper—of French colonialism—to partition Morocco and disrupt its national territorial unity, by setting up an artificial State in the area of Southern Morocco which the colonialists call Mauritania."<sup>189</sup>

On the other hand, most states voting for Resolution 1514's paragraph 6 probably did so in the belief that they were creating a sort of "grandfather clause": setting out the right of self-determination for all colonies but not extending it to parts of decolonized states and seeking to ensure that the act of self-determination occur within the established boundaries of colonies, rather than within sub-regions. The U.N. debates and their juxtaposition with events in the former Belgian Congo make clear that the desire to prevent self-determination from becoming a justification for Katanga-type secessions was uppermost in the minds of most delegates.

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186. See, e.g., 15 U.N. GAOR 946, at 1267 (1960) (Remarks of Mr. Pazhwak, Representative of Afghanistan).

187. *Id.* at 1268 (Remarks of Mr. Rafa'l, Representative of Jordan).

188. 15 U.N. GAOR 947, at 1271 (1960) (Remarks of Mr. Palar, Representative of Indonesia).

189. *Id.* at 1284 (Remarks of Mr. Ben Aboud, Representative of Morocco).

In the case of Belize, Guatemala has asserted another principle: that the "real" inhabitants of the colony are the Indians who now constitute only a small part of the population of Belize but approximately 70% of the inhabitants of Guatemala. This argument based on "historic inhabitance" is perhaps the most potentially dangerous of all to the cause of world order and has unlimited capacity to generate crises and chaos in relations between states. It has been pursued with particular diligence, and with surprisingly widespread support among members of the United Nations, in the cases of Gibraltar and the Falkland Islands.

#### IV. SELF-DETERMINATION DENIED: GIBRALTAR AND THE FALKLAND ISLANDS

##### A. *The Problem of Gibraltar*

The British colony of Gibraltar is a territory with an area of only 2¼ square miles and a total population of 29,927.<sup>190</sup> Like Djibouti, Gibraltar's economy depends on its dockyard installations, its entrepôt trade and its crucial strategic location controlling the entrance to the Mediterranean from the Atlantic. The effect of new developments in the Law of the Seas—in this case the expansion of territorial seas to a width of twelve miles and the subsequent effect on the right of free passage through straits—would further enhance the importance of Gibraltar.

The relationship of Gibraltar to Britain is governed by the Gibraltar Constitution Order of 1969 which states in its Preamble that "Her Majesty's Government will never enter into arrangements in which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes . . ."<sup>191</sup> Gibraltar was first discussed in the Special Committee in 1963. The following year a "consensus" was adopted which noted the existence of a dispute between Britain and Spain regarding the status of the territory and invited the two countries to begin talks without delay in order to resolve this

190. Report of Special Committee, U.N. Doc. A/10023/Add.6 (Part I), Annex, at 21 (1975).

191. Supplement to Gibraltar Gazettes, No. 1195 of 30th May 1969, Her Majesty's Stationery Office, St. Stephen's Parliamentary Press. See also Report of Special Committee, 24 U.N. GAOR Supp. 23, Vol. III, at 53, U.N. Doc. A/7623/Rev.1 (1969). For a description of the remaining provisions see *Id.* at paras. 13-23.

dispute "in accordance with the principles of the United Nations Charter . . . in conformity with the provisions of General Assembly Resolution 1514 . . .," while "bearing in mind the interests of the people of the Territory."<sup>192</sup> Britain thereupon took the position, from which it has since scarcely deviated, that it was willing to discuss the dispute with Spain, but not on the basis of coercion. The Spanish, however, responded to the consensus by imposing restrictions on the frontier between Spain and Gibraltar. According to the British, these measures amounted to an almost total ban on the export of goods from Spain to Gibraltar and caused prolonged delays on entering or leaving Gibraltar.<sup>193</sup> In 1965 the General Assembly passed a resolution essentially reaffirming the 1964 consensus of the Special Committee.<sup>194</sup> This was reiterated in 1966 with the important addition that the Assembly asked "the administering Power to expedite, without any hindrance and in consultation with the government of Spain, the decolonization of Gibraltar . . ."<sup>195</sup>

During this period there were further attempts to start negotiations, the failure of which in turn led to further Spanish sanctions, including restrictions which made aerial access difficult.<sup>196</sup> In response to increasing Spanish pressure, the British renewed an offer to submit the issue to the International Court but made it clear that Britain would not be a party to a Spanish *fait accompli*.<sup>197</sup>

The British Foreign Secretary reminded Spain that Britain had given independence to 700 million people in the preceding 20 years, while Spain had clung to her colonial possessions, and that Britain would apply the same principles it has consistently applied in other decolonizations to Gibraltar.<sup>198</sup> On June 14,

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192. Report of the Special Committee, 19 U.N. GAOR, Annexes, Annex No. 8 (Part I), at 314, U.N. Doc. A/5800/Rev.1 (1964).

193. Letter from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations to the Secretary-General, Oct. 27, 1965, 20 U.N. GAOR, Annexes, Addendum to agenda item 23, at 53, U.N. Doc. A/6084 (1965).

194. G.A. Res. 2070, 20 U.N. GAOR Supp. 14, at 59, U.N. Doc. A/6014 (1965).

195. G.A. Res. 2231, 21 U.N. GAOR Supp. 16, at 74, U.N. Doc. A/6316 (1966).

196. Gibraltar, Recent Differences with Spain, Misc. No. 12 (1965), Cmnd. 2632, H.M.S.O.

197. George Brown, Foreign Secretary, House of Commons, 735 Parliamentary Debates, November 10, 1966, col. 1598.

198. *Id.*

1967, Mrs. Judith Hart, the Minister of State for Commonwealth Relations, informed the House of Commons of the Government's intention to hold a referendum enabling the people of Gibraltar to decide whether to join Spain or retain their links to Britain.<sup>199</sup> It was announced at the same time that the Commonwealth and the United Nations would both be invited to send observers in order to insure the impartiality of the conduct of the referendum. Britain also offered to submit to the International Court the question of whether the referendum was in accordance with its legal obligations under the U.N. Charter and Resolution 1514.<sup>200</sup>

The referendum took place on September 10. Out of 12,182 votes cast, 12,138 supported continuation of the link with Britain and 44 were cast for passage under Spanish sovereignty.<sup>201</sup> The four Commonwealth observers stated that they were impressed with the fair and proper manner in which the people of Gibraltar had freely expressed their views in a secret ballot.<sup>202</sup> The United Nations had not sent an observer to oversee the referendum. Instead, just before the vote, on September 1, 1967, the Special Committee adopted a resolution which declared "the holding . . .

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199. Judith Hart, Minister of State for Commonwealth Relations, House of Commons, 748 Parliamentary Debates, June 14, 1967, cols. 563-66. Mrs. Hart reiterated that decolonization cannot compel "the transfer of one population, however small, to the rule of another country, without regard to their own opinions and interest. . . . We have accordingly decided that a referendum should be held in Gibraltar in which the people of Gibraltar should be invited to say which of the following alternative courses would best serve their interests:

"A. To pass under Spanish sovereignty in accordance with the terms proposed by the Spanish Government to Her Majesty's Government on 18th May, 1966; or

"B. Voluntarily to retain their link with Britain, with democratic local institutions and with Britain retaining its present responsibilities.

"If the majority of the people of Gibraltar vote in favor of the first alternative, we will be ready to enter into negotiations with the Spanish Government accordingly.

"If the majority of the people of Gibraltar vote in favor of the second alternative, we will regard this choice as constituting, in the circumstances of Gibraltar, a free and voluntary relationship of the people of Gibraltar with Britain. We will thereafter discuss with representatives of the people of Gibraltar appropriate constitutional changes which may be desired." *Id.*

200. Text of British *aide memoire* communicated to the Spanish Ambassador in London on July 31, 1967, in reply to the Spanish *aide memoire* of July 3, 1967. Official Text, Br. Info. Services, T.36, New York, Aug. 1, 1967.

201. Letter from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the Secretary-General, Oct. 25, 1967, 22 U.N. GAOR, Annexes, agenda item No. 23, at 5, U.N. Doc. A/6876 (1967).

202. *Id.* at 6.

of the envisaged referendum would contradict the provisions of Resolution 2231 (XXI)."<sup>203</sup> The General Assembly adopted a nearly identical resolution in December, by a vote of 73 to 19, with 27 abstentions.<sup>204</sup>

The preamble of Resolution 2353 (XXII) applied paragraph 6 of Resolution 1514(XV) to the Gibraltar situation.<sup>205</sup> Thus consulting the people of a territory about their own wishes was for the first time found to violate paragraph 6. The British Government found that this resolution in many important respects conflicted with the Charter of the United Nations and announced that new constitutional talks would be held with the government of Gibraltar which would lead to substantial domestic self-government, but not to any alteration of the international status of the territory.<sup>206</sup> To these developments the Spanish Government responded by imposing a virtually complete ban on movement of persons and goods between Gibraltar and Spain.<sup>207</sup>

The British Secretary of State for Commonwealth Affairs, in turn, reacted vigorously both against the Spanish land blockade and the General Assembly's resolution. "I say now, as plainly as I can," he told Parliament,

that Her Majesty's Government will never betray the rights of the people of Gibraltar to determine where their own interests lie. I give . . . the assurance . . . that in no circumstances will Britain surrender sovereignty over Gibraltar against the wishes of her people. I add that we will protect and support them whatever threats are brought to bear . . . I frankly regard the adoption of Resolution 2353 . . . as little short of disgraceful . . . [I]t does great damage to the reputation of the General Assembly as the guardian of the rights of colonial peoples.<sup>208</sup>

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203. Report of the Special Committee, 22 U.N. GAOR, Annexes, Addendum to agenda item No. 23 (Part II), at 238, U.N. Doc. A/6700/Rev.1 (1967).

204. G.A. Res. 2353, 22 U.N. GAOR Supp. 16, at 53, U.N. Doc. A/6716 (1967).

205. *Id.*

206. Note from the United Kingdom Ambassador to Madrid to the Minister of External Affairs of Spain, Feb. 19, 1968, Report of the Secretary-General on Gibraltar, 23 U.N. GAOR, Annexes, agenda Item No. 23, at 3, U.N. Doc. A/7121 (1968).

207. Order dated 23 March 1968 from the Vice-President of the Spanish Government to the Governor of Campo de Gibraltar. *Id.* at 6, U.N. Doc. A/7121/Add.2, Annex IIA.

208. Mr. George Thomson, Commonwealth Secretary, House of Commons, Parliamentary Debates, vol. 764, May 7, 1968, col. 271.



The British legal position is that Gibraltar became a British possession by conquest in 1704. Thereafter, "the full and entire propriety of the Town and Castle of Gibraltar" was legally ceded by Spain in the Treaty of Utrecht of 1713.<sup>209</sup> That Treaty gives Britain title, but reserves to Spain a reversionary right in the event that Britain should ever relinquish sovereignty.<sup>210</sup> The British emphasize their responsibility under Article 73 of the U.N. Charter to "recognize the principle that the interests of the inhabitants of these territories are paramount" and to that end "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions." This obligation is underscored by Resolution 1514, paragraph 2, providing that "all people have the right of self-determination" by which is meant that "they freely determine their political status."<sup>211</sup> This, the British insist, is what they have done by the 1967 plebiscite and by creating the political institutions of self-government in the 1969 Constitution. "It was the obligation [on reversion to Spain] that the United Kingdom Government had . . . accepted under the Treaty of Utrecht that had prevented it so far from being able to accord full independence to Gibraltar."<sup>212</sup> In the U.N. the British asked: "[W]ould the Spanish Government be ready to release the United Kingdom Government from that provision of the Treaty of Utrecht, so that it should become possible for the United Kingdom Government to decolonize Gibraltar in the normal way, i.e. by granting independence . . . ?"<sup>213</sup>

The Spanish position is that Gibraltar is a colony, used by Britain as a military base, and that Article 73 of the Charter and Resolution 1514 require an end to the colonial regime.<sup>214</sup> The Treaty of Utrecht makes clear that when the colonial regime ends,

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209. Treaty of Utrecht, July 13, 1713, art. X, in 1 *British and Foreign State Papers* 613.

210. "And in case it shall hereafter seem meet to the Crown of Great Britain to grant, sell, or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed, and concluded, that the preference of having the same shall always be given to the Crown of Spain before any others." *Id.*, art. 10.

211. G.A. Res. 1514, para. 2, *supra* note 6.

212. 23 U.N. GAOR 1799, at 14, Fourth Committee (1968) (Mr. Luard).

213. *Id.* at 13.

214. *Id.* at 9. See also Observations by the Spanish Government on the Gibraltar Constitution of 1969, in Report of the Secretary-General on Gibraltar, 24 U.N. GAOR Annexes, agenda item No. 23, Annex IV, at 3, U.N. Doc. A/7550/Add.1 (1969). [hereinafter: Observations]

the territory must revert to Spain, from which it was taken by force, and Resolution 1514, paragraph 6, confirms that Spain is entitled to the restoration of its territorial integrity. As for the right of self-determination, Spain argues that the Charter must be interpreted to restrict that right "to the indigenous populations . . . to those who had their roots in the Territory." It could not be taken to mean that "a few settlers, established in a Territory from which the original inhabitants had been first expelled, could one day take over the Territory . . . ." <sup>215</sup>

The people of Gibraltar are an integrated mixture of Maltese, Italians, Jews and other Mediterranean peoples, and have been established on Gibraltar for up to 250 years. The British assert this is longer "than the Spanish people themselves had ever been in Gibraltar, for the only period during which Spain had ruled Gibraltar had been after the Arabs had been driven out in 1494—the period between 1494 and the time when the British Government took over Gibraltar being a shorter period than the period since the Treaty of Utrecht."<sup>216</sup> Nevertheless, Spain has insisted, the Gibraltarians are foreign intruders into what is geographically an Hispanic area. To apply self-determination in such circumstances would be to perpetuate the colonial wrong and its historic injustices.<sup>217</sup> It is not difficult to see that the legal implications of this argument could far exceed the bounds of the Gibraltar issue.<sup>218</sup>

The General Assembly in 1969 went still farther in siding with Spain. By a majority of 67 to 18, with 34 abstentions, the Assembly requested Britain "to terminate the colonial situation in Gibraltar no later than 1 October 1969 . . . ." <sup>219</sup> After the publication of the 1969 Gibraltar constitution, Spain also asserted that the degree of self-government that instrument gave to the inhabitants violated the reversionary clause of the Treaty of Utrecht by creating the conditions for a transfer of possession from Britain to a *de facto* new sovereign entity.<sup>220</sup> Madrid underscored its

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215. 23 U.N. GAOR 1799, at 14, Fourth Committee (1968) (Mr. DePinies).

216. *Id.* at 13.

217. *Id.* at 13.

218. To Arab delegations the precedent was aimed directly at the creation of Israel against the will of the legitimate inhabitants of Palestine. 22 U.N. GAOR 1752, at 528, Fourth Committee (1967) (Mr. El-Farra).

219. G.A. Res. 2429, 23 U.N. GAOR Supp. 18, at 64, U.N. Doc. A/7218 (1968). The vote (67 for to 18 against, with 34 abstentions) may be found in 23 U.N. GAOR 1747, at 14 (1968).

220. Observations, *supra* note 214, at 4.

position by prohibiting Spanish labor, a mainstay of the colony's service economy, from working in Gibraltar and by severing telephone links with the colony.<sup>221</sup>

During the 1969 Gibraltar elections the Labour Party government which had conducted unofficial negotiations with Madrid's emissaries was defeated by a coalition espousing a policy of total integration with Britain.<sup>222</sup> Ministerial meetings in 1971-72 between Britain and Spain brought no change in positions.<sup>223</sup> Then, in June, 1972, the Gibraltar Labour Party, headed by Sir Joshua Hassan, was returned to power in new elections.<sup>224</sup> In July, 1972, a visit of the Spanish Foreign Minister to London was officially reported to have proceeded in a "friendly and constructive spirit."<sup>225</sup> Also contributing to a faint but noticeable relaxation of tensions was an uncharacteristic reticence on the part of the General Assembly which, during its Twenty-fourth through Twenty-eighth sessions, passed no resolutions on Gibraltar.

By May, 1973, the most that could be said of the ongoing ministerial discussions was that "the dialogue had not completely collapsed but that a period of reflection was needed."<sup>226</sup> Thereafter, Spanish activity again shifted to the General Assembly. The Twenty-eighth session adopted a relatively mild consensus which, while recalling its earlier resolutions, merely expressed "the hope that negotiations with a view to the final solution of this problem, taking into account the aforementioned resolutions and in the spirit of the Charter of the United Nations, will soon be resumed . . . ."<sup>227</sup> In 1974, without a vote, it adopted a resolution urging the two governments to resume "without delay" the negotiations envisaged by the previous year's consensus.<sup>228</sup> Although "exploratory" talks at the Ministerial level were held in Madrid

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221. Report of the Special Committee, 25 U.N. GAOR Supp. 23, Vol. III, at 45, U.N. Doc. A/8023/Rev.1 (1970).

222. *Id.* at 46-47.

223. Report of the Special Committee, 26 U.N. GAOR Supp. 23, at 40-41, U.N. Doc. A/8423/Rev.1 (1971); Report of the Special Committee, 27 U.N. GAOR Supp. 23, at 38-39, U.N. Doc. A/8723/Rev.1 (1972).

224. *Id.* at 39.

225. *Id.* at 40.

226. Report of the Special Committee, 28 U.N. GAOR Supp. 23, at Vol. IV, at 77, U.N. Doc. A/9023/Rev.1 (1973).

227. Consensus on Gibraltar, 28 U.N. GAOR Supp. 30, at 111, U.N. Doc. A/9030 (1973).

228. G.A. Res. 3286, 29 U.N. GAOR Supp. 31, at 99, U.N. Doc. A/9631 (1974).

during May of 1974,<sup>229</sup> it was clear that little had changed in the position of the parties.

In November, a proposal made by the Spanish authorities to Sir Joshua Hassan, the Chief Minister of Gibraltar, was published. It called for a transfer of sovereignty to Spain, but with the understanding that the territory could retain a measure of legislative, judicial, administrative and financial autonomy, and it offered the residents Spanish citizenship while permitting them concurrently to keep their British nationality. However, Spanish would become the official language, Spanish penal and police laws would apply in all matters affecting the internal and external security of Spain, Madrid would appoint the Governor, and the most senior officials would be either Spaniards or Gibraltarians of Spanish nationality.<sup>230</sup> While this proposal has not found any open support in Gibraltar, it is the basis for further negotiation.

Ultimately, Gibraltar may achieve an autonomous status under the personal sovereignty of the Spanish head of state. If this is the direction in which events move, the constitutional position of other regions of Spain—the Basque and Catalan provinces in particular—would presumably have to be renegotiated at the same time. They could hardly be expected to settle for less autonomy than Gibraltar. All that would take time, negotiation and consultation. In the meantime, the official British position remains that any future arrangements affecting Gibraltar's sovereignty must be reached on the basis of self-determination of the inhabitants.

Two factors, in particular, are likely to affect Gibraltar's future. The first is the 1975 Madrid-Rabat agreement disposing of the Sahara. This replaces the former Spanish-Moroccan hostility with a new spirit of cooperation. It is widely believed that Morocco now stands ready to help, should Spain decide to tighten the blockade on Gibraltar. So far, that blockade has been little more than inconvenient, but should Morocco impose similar measures, Gibraltar could find it very difficult to maintain communications or even to obtain basic necessities like water. Whether or not the Madrid Agreement<sup>231</sup> contains a secret Gibraltar protocol, it is widely believed by both Spanish and Moroccan authorities that Spain, having abandoned its defense of Sahrawi

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229. Report of the Special Committee, U.N. Doc. A/10023/Add.6 (Part 1), at 21 (1975).

230. *Id.* at 23-24.

231. *Supra* note 39.

self-determination, is now entitled to Morocco's help precluding self-determination for Gibraltar. As an added inducement, Rabat has been given to understand that the Spanish enclaves of Ceuta and Mellila are likely to be returned to Morocco after Spain gets back Gibraltar.<sup>232</sup>

All this would be very bad news for the population of Gibraltar, were it not for another current factor. With the demise of General Franco, Spain's centerist establishment, as well as its democratic left, has assigned highest priority to obtaining entry for their country into the European Community—a project barred for the lifetime of the former dictator. Madrid knows that it would be improvident to damage the prospects for this crucial economic and political goal by unremitting pursuit of a territorial quarrel with one of the major partners of the Community. There is also a realization that an arrangement with a future liberal democratic Spain is more likely to be acceptable to the people of Gibraltar, the more so if Spain is also a member of NATO and the European community. Thus this may be a time when prudence and relaxation of tensions will appear the best strategy to the Madrid Government.

#### *B. The Case of the Falkland Islands*

The Falkland Islands, 350 miles east of the Argentine coast, are among the smallest and least populated of all colonial territories. There are approximately 2,000 permanent residents, ninety-seven percent of whom are of British origin, occupying an area of only 4,600 square miles.<sup>233</sup> As is the case of Gibraltar, they wish to remain linked with Britain, and Britain has formally pledged to respect that wish.<sup>234</sup>

The standard of living of the islanders is high—in fact, higher than that of Britain. Wool, produced by 650,000 sheep, constitutes the strength of the economy<sup>235</sup> and is now being augmented by a calcium alginate industry based on seaweed.<sup>236</sup> What has brought to prominence and urgency the long simmer-

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232. Interviews with Spanish diplomats and U.N. personnel.

233. Report of the Special Committee, U.N. Doc. A/10023/Add.8 (Part III), Annex, at 5 (1975). British Information Services, Policy and Reference Division, Policy Background, January 15, 1976, p. 1. [hereinafter: Br. Info. Service]

234. Br. Info. Service, *supra* note 233, at 1-2.

235. The Times (London), Jan. 15, 1976, at 5, cols. 7-8.

236. Br. Info. Service, *supra* note 233, at 2.

ing dispute<sup>237</sup> between Britain and Argentina over the Falklands is the favorable prospect of oil in the very large continental shelf which surrounds the islands and which is part of the underwater landmass extending east from the Argentine coast.<sup>238</sup>

The arrival, early in 1976, of a British mission, headed by Lord Shackleton, whose purpose was to study the Falklands' resources, caused relations between Britain and Argentina to unravel rapidly. The Argentine ambassador was recalled from London and his British counterpart withdrawn from Buenos Aires.<sup>239</sup> Argentine Members of Parliament and press called for stronger action, including the liberation of what they call the Malvinas Islands<sup>240</sup> by force if necessary.<sup>241</sup> Responding to this call to action, in the first few days of February an Argentine destroyer fired shots across the bow of a British research ship—fittingly, the "Shackleton,"—located some 80 miles from the Falklands. The vessel was ordered to proceed to Argentina, an order which it ignored.

In January the London *Times* had thundered that the Government's position "that the expressed preference of the islanders does not allow of any transfer of sovereignty remains the anchor that should not be raised however distant the islands or small in number their population."<sup>242</sup> The day after the February "Shackleton" incident the Under-Secretary for Foreign and Commonwealth Affairs, rejecting the Argentine show of force, proclaimed to a cheering House of Commons: "The position of the Government is clear. We respect the wishes of the Falkland Islanders."<sup>243</sup> Supporting this strong verbal commitment, however, was a British military contingent on the islands consisting of merely 37 Royal Marines.<sup>244</sup>

The role of the U.N. in this dispute differs little from its role vis-à-vis Gibraltar. General Assembly resolutions since 1965 have essentially sided with Argentina's claim and against Britain's posi-

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237. Since 1945, the Argentine claim to the Falkland Islands and regional support for that claim have often paralleled the Belize issue. See text accompanying notes 141-142 *supra*.

238. Br. Info. Service, *supra* note 233, at 2; Report of the Special Committee, *supra* note 233, at 9-10.

239. The Washington Post, Jan. 15, 1976, at A21, col. 7.

240. The Times (London), Jan. 29, 1976, at 7, col. 1.

241. *Id.*, Jan. 15, 1976, at 15, cols. 1-3.

242. *Id.* (Editorial)

243. *Id.*, Jan. 17, 1976, at 1, col. 3.

244. *Id.*, Feb. 6, 1976, at 6, cols. 5-8.

tion in terms almost identical to the Gibraltar resolutions, calling for negotiations between Argentina and Britain to terminate the colonial presence, while merely "bearing in mind" the interests of the local population.<sup>245</sup> Neither the Gibraltar resolutions nor the Falkland Island resolutions, however, include provisions calling for self-determination. Indeed, in 1973 the Assembly passed a new resolution in which it explicitly accepted the Argentinian contention that "the way to put an end to this colonial situation is the peaceful solution of the conflict of sovereignty" (i.e. the transfer of sovereignty to Argentina) and expressed the Assembly's "gratitude for the continuous efforts made by the Government of Argentina, in accordance with the relevant decisions of the General Assembly, to facilitate the process of decolonization. . . ."<sup>246</sup>

Argentina's position is initially based on a claim to historic title originating prior to 1833 (when the islands became a British colony), and leads to the by now familiar invocation of paragraph 6 of Resolution 1514—the "territorial integrity" clause. Second, Argentina contends that the population now living in the islands has no right to self-determination because they are a settler population who replaced the legitimate previous Argentinian inhabitants. These arguments have received overwhelming endorsement in the General Assembly. In the key 1965 vote on Resolution 2065 (XX),<sup>247</sup> even Israel supported Argentina, despite the implications to its own security of a precedent for denying legitimacy to a "settler" population which had "expelled" its predecessors and which was ethnically dissonant in the region.<sup>248</sup>

The history of the Falklands may or may not validate Argentina's claim of historic title. As is the case with Belize, the relevant events are probably incapable of definitive resolution. According to the British version of events, the first landing oc-

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245. G.A. Res. 2065, 20 U.N. GAOR Supp. 14, at 57, U.N. Doc. A/6014 (1965); Consensus, 21 U.N. GAOR, Annexes, agenda item No. 23, at 31, U.N. Doc. A/6628 (1966), noted by the General Assembly in 21 U.N. GAOR 1500, at 1 (1966); Consensus, 22 U.N. GAOR Supp. 16, at 57, U.N. Doc. A/6716 (1967); Consensus, 24 U.N. GAOR Supp. 30, at 75, U.N. Doc. A/7630 (1969); Consensus, 26 U.N. GAOR Supp. 29, at 111-112, U.N. Doc. A/8429 (1971).

246. G.A. Res. 3160, 28 U.N. GAOR Supp. 30, at 109, U.N. Doc. A/9030 (1973).

247. The vote on Resolution 2065 (XX) was 94 to 0, with 14 abstentions—all these being Western European or white Commonwealth countries and South Africa. 20 U.N. GAOR 1398, at 9 (1965).

248. The Organization of American States, in Resolution XXXIII of Bogota in 1948, developed this classification of hemispheric "occupied territories" which also includes Belize and the American zone of Antarctica.

curred in 1690, led by Captain John Strong of the British navy.<sup>249</sup> The first settlement, on East Falkland, was French and did not take place until 1764. The next year East Falkland was sold to Spain. A British settlement, established on West Falkland in 1765-66, was attacked and occupied by the Spaniards in 1770, but returned to the British a year later. It was abandoned in 1774, although the British sought to maintain their claim by leaving a metal plaque. The Spanish settlement was withdrawn in 1811. After the Argentine government proclaimed its independence of Spain in 1810, it established a settlement which, in 1831, was destroyed by a U.S. warship. In 1833, British occupation was resumed and has been maintained continuously since that date.<sup>250</sup>

In the view of the Argentine government, British colonial sovereignty "arose" from an act of military force by the United Kingdom in 1833 against a part of the Territory of Argentina, as established upon its accession to independence in 1810, following which Argentina's authorities and inhabitants had been expelled from the islands and later replaced by settlers from the United Kingdom.<sup>251</sup> In particular, Argentina has maintained that in light of the fact that the Islanders were not the original inhabitants, but had simply replaced those expelled by force, the territorial integrity paragraph of Resolution 1514 overrides the right of the Islanders to self-determination.<sup>252</sup>

As in the case of Belize and Gibraltar, the British have pointed out that there are institutions of representative government in the Falklands. Thus, it was for the Islanders to determine their ultimate constitutional status. According to London,

[T]he United Kingdom was always ready to consider any proposal for constitutional change that the Islanders might advance. For the present, the Islanders had made it clear that they did not want independence. The . . . elected members of the Legislative Council had addressed [a message] to the Chairman of the [U.N.] Special Committee on 3 August 1964 in order to inform the Committee of the wishes of the people of the Islands. They had stated that they were proud to be citizens of a British Colony and had expressed their desire to

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249. Br. Inf. Service, *supra* note 233, at 3.

250. Cf. Report of the Special Committee, 19 U.N. GAOR, Annexes, Annex No. 8 (Part I), at 434, U.N. Doc. A/5800/Rev. 1 (1964); Br. Info. Service, *supra* note 233, at 3.

251. *Id.* at 436.

252. *Id.* at 437.



retain and strengthen their links with the United Kingdom. They had asserted in the strongest possible terms that any constitutional association with a foreign Power would be repugnant to them.<sup>253</sup>

Britain, in honoring these preferences, was responding in this colony, as it had in all its territories, to the inhabitants' right to self-determination. There is no doubt in Britain's mind that its historic title was valid, but, even were it otherwise, in modern international law the right of self-determination would have to take priority over a claim going back almost 150 years.<sup>254</sup> These legal arguments have changed little over the past decade.<sup>255</sup>

There have been some steps taken toward a normalization of relations between the Islands and the Argentine mainland. In 1971, for example, an agreement was reached on cooperation in education, transit and air communication.<sup>256</sup> Soon after, however, Buenos Aires was again pressing for the transfer of sovereignty. Faced once more by British assertions of the Falklanders' right of self-determination, Argentina replied that British concern for the population would be praiseworthy and legitimate if the United Kingdom had similarly consulted the original population of the Malvinas Islands about their wishes before displacing them by force and replacing them with British settlers in 1833. The Argentine ambassador added that this problem "was not a theoretical one but was highly relevant to existing situations."<sup>257</sup>

In the 1973 vote on General Assembly Resolution 3160 (XXVIII), which reiterated the previous calls for negotiations, Britain fared even worse than in 1965.<sup>258</sup>

Significantly, in the many U.N. debates on these obscure islands, the one factor never stressed to support Argentina's case against self-determination is the most obvious one: the smallness of the population that would be entitled to exercise the right. On the contrary, infinitesimal smallness has never been seen as a reason to deny self-determination to a population. The same nations that regularly vote, in effect, to compel the Falklands' popu-

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253. *Id.* at 440.

254. *Id.*

255. See, e.g., 28 U.N. GAOR 2074, Fourth Committee, 299-303 (1973).

256. U.N. Doc. A/8369 (1971).

257. 28 U.N. GAOR 2074, at 302, Fourth Committee (1973) (Mr. Ortiz DeRozas).

258. The vote was 116 for to 0 against, with 14 abstentions. 28 U.N. GAOR 2202, U.N. Doc. A/PV.2202, at 25 (1973).

lation into an unwanted union with Argentina also vote almost annually "to reaffirm the inalienable right of the people of St. Helena to self-determination" and call on the administering Power to speed that process, even though the St. Helena population is only slightly larger (approximately 4,000) than that of the Falklands.<sup>259</sup> But, then, no Third World nation is currently laying claim to St. Helena.

## V. CONCLUSION

The selective non-application of the right of self-determination in the cases of Gibraltar and the Falkland Islands only highlights the dangers inherent in allowing historical-ethnic claims to carve out exceptions to the hitherto universal norms of decolonization. The historical and ethnic concepts of title have proved malleable enough to be molded to meet almost any requirements of would-be aggressors. Present day boundaries do not reflect neat divisions of "indigenous" populations any more than they do topography or ethnically-pure groupings—even were it possible to determine how far back a population must trace its roots to be deemed "indigenous."

Policymakers may be little dismayed by the annexation of the Western Sahara or East Timor or concerned over the future of Belize or Djibouti. These territories are so small as to engender little more than a reflex response, based on traditional Cold War alignments. But the easy victories of Morocco and Indonesia, underscored by the wholly ineffective response of the United Nations, are likely to encourage other states to resolve long-simmering disputes or satisfy national ambitions by force, rather than by law and diplomacy. The Ethiopian "peasant march" into Eritrea<sup>260</sup> is evidence that the success of Morocco's "Green March" has impressed the leaders of other states.

Clearly, the seeming demise of the carefully constructed norms of self-determination, state legitimacy and the inviolability of boundaries pose an implicit threat to the territorial integrity of other states that do not have the military capability to resist the expansionist and irredentist aspirations of more powerful neighbors. The U.N. has until now played a positive role in preserving

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259. See, e.g., Consensus, U.N. Doc. GA/5438, at 264-265 (1975) (Press Release).

260. N.Y. Times, May 23, 1976, at 1, cols. 1-2; *Id.*, May 24, 1976, at 15, col. 1.

the vitality and universality of these fundamental principles. But as the 31st Session nears, the Janus-faced Resolution 3458 (XXX) and the presence of Moroccan and Indonesian troops in Western Sahara and East Timor mock the Charter, further undermining the organization's credibility. Moreover, the growth of guerrilla movements in both territories virtually assures that the U.N. will not be able to ignore these cases as if they had been resolved.

Admittedly, the U.N. no longer has much room for maneuver. In the case of the Spanish Sahara, however, it is still possible for the General Assembly's Special Committee to pursue the position that the decolonization of the Sahara has not occurred in a manner congruent with the principles laid down by the General Assembly. It would be appropriate for the General Assembly to refuse to recognize the so-called act of self-determination arranged by the Moroccan authorities and to call on member states to so conduct themselves vis-à-vis Morocco as to give no credence to Moroccan sovereignty in the Sahara. Such a resolution would be comparable to those passed by the Assembly to encourage states to so conduct their affairs as to avoid recognizing South African assertions of title to the illegally occupied territory of Namibia.<sup>261</sup>

In the case of East Timor, the Portuguese authorities are obviously unable to affect the outcome of that crisis. Accordingly, the U.N. could join with Portugal in effecting a transfer of title to the territory from the latter to the former for a transitional period prior to self-determination. During such time, a U.N. commissioner would be clothed with responsibility for discharging the obligation in U.N. resolutions that accord the right of self-determination to the people of the Territory. In negotiating this transfer of authority the Secretariat, authorized by the General Assembly, could be guided by the precedent of the United Nations Temporary Executive Authority (UNTEA), established under the jurisdiction of the Secretary-General, which administered West Irian temporarily pursuant to an agreement between

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261. The General Assembly terminated the South African mandate over Namibia in G.A. Res. 2145, 21 U.N. GAOR Supp. 16, at 2-3, U.N. Doc. A/6316 (1966). Most recently, the General Assembly passed G.A. Res. 3398, U.N. Doc. GA/5438, at 223-224 (1975) (Press Release) which, *inter alia*, "[c]alls upon all States to discontinue all economic, financial or trade relations with South Africa concerning Namibia and to refrain from entering into economic, financial or other relations with South Africa, acting on behalf of or concerning Namibia, which may lend support to its continued illegal occupation of that Territory."

the Netherlands and the Republic of Indonesia.<sup>262</sup> That agreement was ratified by the General Assembly in Resolution 1752 (XVII), which authorized the Secretary-General "to carry out the tasks entrusted to him. . ."<sup>263</sup> Since Portugal (unlike Spain vis-à-vis the Western Sahara) does not recognize or accept the forceful occupation of its former colony, it is likely to be willing to participate in a transfer of title and responsibility to an agency better able to exercise leverage with the illegal occupier. Assumption of direct responsibility by the U.N. for the exercise by the Timorese people of their right to self-determination accords with the essential role that the U.N. has played in the decolonization process and would do much to reestablish the integrity of the damaged self-determination norm. In practical terms, a U.N. administration would at least help insure that the basic needs of refugees are met and that the issue remains effectively before the world forum.

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262. Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), 17 U.N. GAOR Annexes, agenda item 89, at 2, Annex, U.N. Doc. A/5170 and Add.1 (1962).

263. G.A. Res. 1752, 17 U.N. GAOR Supp. 17, at 70, U.N. Doc. A/5217 (1962).

## **ANNEX 113**

Roger S. Clark, 'The "Decolonization" of East Timor and the United Nations Norms on Self-Determination and Aggression' (1980) 7 *Yale Journal of World Public Order* 2

# The “Decolonization” of East Timor and the United Nations Norms on Self-Determination and Aggression

Roger S. Clark<sup>†</sup>

## Introduction

The island of Timor lies some 400 miles off the northwest coast of Australia, at the tip of the chain of islands forming the Republic of Indonesia. Before World War II, the western half of the island was administered by the Netherlands, the eastern half by Portugal. When Indonesia gained its independence from the Netherlands in 1949, the western half became Indonesian Timor, a part of Indonesia. Portugal continued to administer the eastern half of the island, East Timor, until 1975. East Timor was evacuated by the Portuguese authorities in August, 1975 during civil disorders condoned, if not fomented by the Indonesians. Within a few months, Indonesia invaded and annexed East Timor.

It is estimated that, since 1975, more than 100,000 East Timorese have died from war, famine, and disease. Most of these deaths occurred after the Indonesian invasion and occupation. This Article analyzes Indonesia's actions and concludes that they violated international law, specifically the norms regarding self-determination and aggression.<sup>1</sup>

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1. In his syndicated column dated November 8, 1979, Jack Anderson estimated that about half of the 1975 population, which he gave as 600,000, had been “wiped out by warfare, disease and starvation.” Anderson, *Island Losing a Lonely Infamous War*, Wash. Post, Nov. 8, 1979, § DC, at 11, col. 4. Most observers would put the number at less, but there is no doubt that the Indonesians perpetrated a massive human tragedy. The International Red Cross, which had been actively involved in humanitarian work in the aftermath of the August, 1975 civil war, was forced to leave the country at the time of the Indonesian invasion. The Indonesians did not have the will or the logistical resources to alleviate suffering in the territory and, until 1979, denied entry to international aid organizations that did have the capacity to respond. The International Committee of the Red Cross was permitted to return in October, 1979 but only on a limited basis. After completing an assessment mission to the territory, the medical coordinator of relief efforts in East Timor of the International Committee of the Red Cross stated in February, 1980 that the situation was among the worst he had ever seen. Since then, the harshest features of widespread malnutrition appear to have been overcome, but there is still a great deal of work to be done to alleviate the residual effects of the invasion. See generally 35 U.N. GAOR, C.4 (9th mtg.) 9, U.N. Doc. A/C.4/35/SR.9 (1980) (statement of R. Clark), reprinted in CULTURAL SURVIVAL, INC., EAST TI-

## I. Recent Political History of East Timor

From the mid-1950s until the mid-1970s, Portugal refused to comply with United Nations policy regarding the administration of non-self-governing territories.<sup>2</sup> As provided in Article 73(e) of the United Nations Charter, states responsible for the administration of territories whose people have not yet attained “a full measure of self-government” must regularly transmit to the Secretary-General “statistical and other information of a technical nature relating to economic, social and educational conditions in the territories.”<sup>3</sup> When Portugal became a member of the United Nations in 1955, it claimed to administer no non-self-governing territories<sup>4</sup> and therefore refused to give to the Sec-

MOR 11 (1981); J. JOLLIFFE, *EAST TIMOR* (1978); Kamm, *The Silent Suffering of East Timor*, N.Y. Times, Feb. 15, 1981, § 6 (Magazine), at 34; *Human Rights in East Timor and the Question of the Use of U.S. Equipment by the Indonesian Armed Forces: Hearings Before the Subcomm. on International Organizations and on Asian and Pacific Affairs of the Comm. on International Relations*, 95th Cong., 1st Sess. 1 (1977); *Human Rights in East Timor: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 95th Cong., 1st Sess. 1 (1977); Dunn, *The East Timor Situation—Report on Talks with Timorese Refugees in Portugal*, 7 J. CONTEMP. ASIA 409 (1977) (this and other articles prepared by Mr. Dunn, the former Australian Consul in Dili, contain a wealth of information); S. NICTERLEIN, 1 *THE STRUGGLE FOR EAST TIMOR* (mimeo. 1978) (on file with *The Yale Journal of World Public Order*); S. NICTERLEIN, 2 *THE STRUGGLE FOR EAST TIMOR* (mimeo. 1979) (on file with *The Yale Journal of World Public Order*); Hoadley, *East Timor: Civil War—Causes and Consequences*, 1976 SOUTHEAST ASIAN AFF. 411; Hoadley, *Indonesia's Annexation of East Timor: Political, Administrative and Developmental Initiatives*, 1977 SOUTHEAST ASIAN AFF. 133. For a useful compilation of research materials on East Timor, see K. SHERLOCK, *A BIBLIOGRAPHY OF TIMOR* (1980). For additional discussion of the legal issues included in the East Timor dispute, see Franck & Hoffman, *The Right of Self-Determination in Very Small Places*, 8 N.Y.U. J. INT'L L. & POL. 331 (1976); Elliot, *The East Timor Dispute*, 27 INT'L & COMP. L.Q. 238 (1978); Suter, *International Law and East Timor*, 5 DYASON HOUSE PAPERS 1 (1978).

In addition to Indonesia's violation of the norms regarding self-determination and aggression in entering and occupying East Timor, the invasion and occupation arguably involved further illegalities, including breaches of the law of war, human rights violations, and genocide. See Session of the Permanent People's Tribunal on East Timor, *reprinted in* Note verbale dated August 11, 1981 from the Permanent Representative of Cape Verde to the United Nations addressed to the Secretary-General, U.N. Doc. A/36/448, Annex at 20-21 (law of war), 21-22 (human rights), and 22 (genocide) (1981); Suter, *supra*, at 4-5 (law of armed conflicts); 35 U.N. GAOR, C.4 (9th mtg.) 9, U.N. Doc. A/C.4/35/SR.9 (1980) (statement of R. Clark) (human rights violations). The weakest argument concerns genocide. See Clark, *Does the Genocide Convention Go Far Enough? Some Thoughts on the Nature of Criminal Genocide in the Context of Indonesia's Invasion of East Timor*, 8 OHIO N. L. REV. (forthcoming 1981). Indonesian leaders' intentions in respect of the Timorese were certainly dishonorable, but it is doubtful that a tribunal similar to the proposed International Criminal Court would find that Indonesia intended to destroy the Timorese people.

2. See Comment, *Portuguese Africa: A Brief History of United Nations Involvement*, 4 DEN. J. INT'L L. & POL'Y 133 (1974).

3. U.N. CHARTER art. 73(e).

4. 11 U.N. GAOR (656th plen. mtg.) 1143, 1149, U.N. Doc. A/PV.656 (1957).

In 1951, Portugal adopted a constitutional amendment redefining Portuguese colonies, including East Timor, as “overseas provinces.” However, as a report prepared for the U.N. Secretariat noted,

retary-General any information regarding its territories. Motivated in part by Portugal's non-compliance,<sup>5</sup> the General Assembly adopted Resolution 1541(XV), delineating principles which should guide members in determining whether they are required to transmit the information required by Article 73(e) of the Charter. Principle IV of Resolution 1541(XV) provides that a *prima facie* obligation to transmit information exists when a territory is geographically separate and ethnically and/or culturally distinct from the country responsible for its administration.<sup>6</sup> Given the ethnic and physical differences between Portugal and its overseas territories,<sup>7</sup> Portugal clearly was subject to Article 73(e) reporting requirements, a point the General Assembly made when it declared Portugal responsible for transmitting information about its territories, including "Timor and dependencies."<sup>8</sup> Portugal, however, took the position that this declaration was beyond the authority of the General Assembly and refused to comply.<sup>9</sup>

A stalemate between Portugal and the United Nations continued un-

[t]he *de jure* change in status in the Territories . . . was not accompanied by *de facto* changes in their government and administration. Nevertheless, the Portuguese regime persisted in declaring that Portugal was a pluricontinental state and refused in consequence to take any steps towards the self-determination and independence of its overseas territories.

U.N. Dep't of Political Affairs, Trusteeship and Decolonization, *Issue on East Timor* DECOLONIZATION, Aug., 1976, at 39 [hereinafter cited as *Issue on East Timor*].

5. G.A. Res. 1541, 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960) [hereinafter cited as G.A. Res. 1541(XV)]. For a summary of the history behind G.A. Res. 1541(XV), see 1960 U.N.Y.B. 44-48.

6. G.A. Res. 1541(XV), *supra* note 5. Principle IV is supplemented by Principle V, which provides that

[o]nce it has been established that such a *prima facie* case of geographical and ethnic or cultural distinctness of a territory exists, other elements may then be brought into consideration. The additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationships between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73(e) of the Charter.

*Id.*

7. East Timor is over 14,000 miles from Portugal. Except for a few thousand persons of Chinese, European, and mixed ancestry, most of the population is of Timorese origin. Physically, the East Timorese display a mixture of Malay and Melanesian traits. 9 ENCYCLOPEDIA BRITANNICA 1017 (1974).

8. G.A. Res. 1542, 15 U.N. GAOR, Supp. (No. 16) 30, U.N. Doc. A/4684 (1960) [hereinafter cited as G.A. Res. 1542(XV)].

9. 15 U.N. GAOR (948th plen. mtg.) 1285, 1293-94, U.N. Doc. A/PV. 948 (1960). Portugal's argument rested on two bases. First, that U.N. Charter Chapter XI, of which Article 73(e) is part, is a mere declaration, creating no legal obligation to transmit information about non-self-governing territories. Second, that even assuming Article 73(e) prescribed a legal duty, Portugal, the administering nation, and not the General Assembly, had the sole authority to determine whether its territories fell within the scope of Article 73(e). *Id.* See generally F. NOGUERIA, THE UNITED NATIONS AND PORTUGAL (1963).



til April, 1974 when a new regime succeeded to power in Lisbon.<sup>10</sup> The new government accepted its duties under Chapter XI and adopted a constitutional amendment recognizing the Portuguese territories' right to self-determination and independence.<sup>11</sup> Questions remained, however, as to how, when, and under whose auspices self-determination would be accomplished. Timor was an outpost of the Portuguese Empire, and the new regime in Lisbon had neither the resources, nor apparently the will, to take bold steps towards its decolonization.

In the power vacuum created by Lisbon's abandonment of efforts to administer the decolonization of East Timor, three political parties emerged, each seeking to direct the decolonization process to different ends.<sup>12</sup> The Frente Revolucionaria de Timor Leste Independente (FRETILIN) wanted independence after a short transitional period; the Associacao Popular Democratica de Timor (APODETI) advocated integration with Indonesia; the Uniao Democratica de Timor (UDT) desired "progressive autonomy" but with continued Portuguese presence.<sup>13</sup> By 1975, FRETILIN appeared to be the leading party.<sup>14</sup>

Using its strong position, FRETILIN undertook diplomatic efforts to obtain support for East Timorese independence. To this end, FRETILIN sought to allay the fears of Indonesia and secure its support.<sup>15</sup> José Ramos Horta, the Minister for External Affairs, assured the Indonesians that an independent East Timor under FRETILIN leader-

10. The Caetano regime was succeeded in April, 1974 by the Junta of National Salvation. N.Y. Times, Apr. 25, 1974, at 1, col. 3.

11. The amendment was adopted on July 24, 1974. See Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 30 U.N. GAOR, 2 Supp. (No. 23) 34, U.N. Doc. A/10023/Rev. 1 (1975). In the Fourth Committee of the General Assembly, Portuguese representatives reaffirmed their nation's recognition of its obligations under Chapter XI. 29 U.N. GAOR, C.4 (2080th mtg.) 3, 7, U.N. Doc. A/C.4/SR.2080 (1975).

12. For background on these parties, see *Issue on East Timor*, *supra* note 4, at 8-12.

13. See *id.* at 8.

14. See Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 11, at 35-36; 35 U.N. GAOR, C.4 (11th mtg.) 7, U.N. Doc. A/C.4/35/SR.11 (1980) (statement of E. Traube), *reprinted in* CULTURAL SURVIVAL, INC., EAST TIMOR 24 (1981) (FRETILIN was well on its way to enjoying wide popular support in November, 1974).

15. In July, 1974, FRETILIN also made diplomatic efforts to win Australian support. At that time, it failed to obtain an Australian commitment to support independence. See *Issue on East Timor*, *supra* note 4, at 12. Further efforts in December resulted in a public statement by Australia supporting the "right of self-determination" of the people of East Timor. See *id.*; 93 AUSTL. PARL. DEB., H.R. (Hansard) 644 (1975) (referring to Australia's support for "measured and deliberate" decolonization of East Timor resulting in self-determination); Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 11, at 34.

ship would maintain close and friendly relations with Indonesia, and would neither support separatist movements within Indonesia nor permit such movements to use Timorese territory as a base of operations against Indonesia.<sup>16</sup> These demonstrations of goodwill succeeded. By letter dated June 17, 1974,<sup>17</sup> Indonesia stated that:

- I. The independence of every country is the right of every nation with no exception for the people in Timor.
- II. The government, as well as the people of Indonesia, have no intention to increase or expand their territory, or to occupy other territories other than what is stipulated in their Constitution. This reiteration is to give you a clear idea, so that there may be no doubt in the minds of the people of Timor in expressing their own wishes.<sup>18</sup>
- III. For this reason, whoever will govern in Timor in the future after independence can be assured that the Government of Indonesia will always strive to maintain good relations, friendship and cooperation for the benefit of both countries.

As concrete steps were taken towards the independence of East Timor, Indonesia's position began to change. In January, 1975, FRETILIN and UDT formed an alliance and began to negotiate with Portugal for a transitional government that would lead to independence—a goal to which UDT had also come to aspire.<sup>19</sup> Indonesian spokesmen thereafter began to suggest that independence was not an option available to East Timor. Comments were made about the terri-

16. Interview with José Ramos Horta, in New York City (Jan. 15, 1981) (on file with *The Yale Journal of World Public Order*). Indonesia is struggling with secessionist movements in West Irian, the South Moluccas, and Aceh (Northern) Sumatra. See N.Y. Times, Oct. 11, 1971, at A6, col. 1 (discussing South Moluccas); *Jakarta's Most Sensitive Spots*, FAR EASTERN ECON. REV., Aug. 4, 1978, at 24 (discussing West Irian and Aceh Sumatra).

17. J. JOLLIFFE, *supra* note 1, at 66.

18. In fact, no particular territory is stipulated in the Indonesian Constitution. See McBeath, *Indonesia*, in 7 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (1973). Representatives of the Republic of Indonesia, however, have made several explicit statements denying any intent to expand into East Timor. For example, in the course of the general debate at the General Assembly's Fifteenth Session in 1960, the then foreign minister of Indonesia said,

[w]e are declaring the right of the Indonesian people to be sovereign and independent within all the territory formerly covered by the Netherlands East Indies. We do not make any claim to any other part of the Indonesian archipelago. Indonesia explicitly does not make any claim at all to territory such as that in Borneo or Timor which lies within the Indonesian archipelago, but was not part of the Netherlands East Indies.

15 U.N. GAOR (888th plen. mtg.) 431, 451, U.N. Doc. A/PV.888 (1960).

In 1957, in the First Committee, the Indonesian representative said, "Indonesia had no claims on any territories which had not been part of the former Netherlands East Indies. No one should suggest otherwise or advance dangerous theories in that respect." 12 U.N. GAOR, C.1 (912th mtg.) 243, 247, U.N. Doc. A/C.1/SR.912 (1957).

19. *Issue on East Timor*, *supra* note 4, at 14.

tory's backwardness and lack of economic viability,<sup>20</sup> and Jakarta disseminated misinformation about the status and condition of East Timor.<sup>21</sup> In particular, FRETILIN was portrayed as a leftist party that planned to deliver the country to the Communists. Such an event allegedly would undermine regional security.<sup>22</sup>

The alliance between UDT and FRETILIN soon began to break down, and no agreement acceptable to both parties could be reached with the Portuguese. UDT leaders were in contact with Indonesia throughout July and August of 1975, and apparently were warned that Indonesia would not tolerate an independent East Timor unless immediate steps were taken against FRETILIN and an anti-communist front was established.<sup>23</sup> With this tacit support, UDT seized power on August 11, 1975, and demanded immediate independence and the imprisonment of FRETILIN leaders.<sup>24</sup> Fighting broke out between FRETILIN and UDT.<sup>25</sup> The Portuguese were in no position to control the situation.<sup>26</sup> Large numbers of the Portuguese military deserted to FRETILIN, and on August 29, the Governor and remaining Portuguese military and civilian personnel withdrew from the capital, Dili, to the nearby island of Atauro.<sup>27</sup> By mid-September, 1975, FRETILIN had taken control of a substantial part of the country,<sup>28</sup> and on November 28, 1975, it declared the independence of the "Democratic Republic

20. *Id.* at 14-15.

21. Nichterlein, *The Struggle for East Timor—Prelude to Invasion*, 7 J. CONTEMP. ASIA 489-90 (1977).

22. *Issue on East Timor*, *supra* note 4, at 15-16. By April, 1975, officials in the Australian Department of Foreign Affairs believed that "the Indonesians remain unshaken in their resolve that, ultimately, Portuguese Timor should become part of Indonesia." At that time, the Australians still believed that Indonesia would not invade East Timor.

The Indonesians have assured us at all levels that they are not contemplating military intervention. There is a less strident tone to Indonesian propaganda. Latest intelligence reports reveal no preparations for early military action. The Portuguese, meanwhile, have reaffirmed their willingness to follow a very gradual time table for decolonization in Timor. This seems to be acceptable to the political groupings on the ground, as well as to the Indonesians.

Brief for Minister for Foreign Affairs, April, 1975, *reprinted in* DOCUMENTS ON AUSTRALIAN DEFENCE AND FOREIGN POLICY 1968-1975 189 (1981) [hereinafter cited as DOCUMENTS].

23. *Issue on East Timor*, *supra* note 4, at 18; N.Y. Times, Aug. 12, 1975, at A2, col. 1.

24. *Issue on East Timor*, *supra* note 4, at 19.

25. *See* Report on Visit to East Timor by Senator Arthur Gietzelt and Representative Ken Fry, Members of Australian Parliament (mimeo., Sept. 1975) (on file with *The Yale Journal of World Public Order*); *Issue on East Timor*, *supra* note 4, at 19. Two to three thousand people lost their lives in the fighting between the two groups, while "thousands" crossed the frontier into Indonesian Timor to escape the war. *Id.*

26. Kamm, *supra* note 1, at 56.

27. *Id.*; *Issues on East Timor*, *supra* note 4, at 19.

28. In the period between the defeat of the UDT forces and the Indonesian invasion, the FRETILIN administration succeeded in reestablishing law and order and in restoring essential services to towns in East Timor. According to J. S. Dunn, former Australian Consul-

of East Timor."<sup>29</sup> Two days later a coalition of APODETI, UDT, and two smaller parties, KOTA and Trabalhista, denounced FRETILIN's action and declared the independence and integration of East Timor with the Republic of Indonesia.<sup>30</sup>

General in East Timor, FRETILIN leaders were warmly received by the Timorese people wherever they went. *Issue on East Timor, supra* note 4, at 23.

29. J. JOLLIFFE, *supra* note 1, at 208-15. At least two factors contributed to FRETILIN's decision to declare the independence of East Timor. First, FRETILIN leaders had been heavily influenced by the events occurring in other Portuguese territories, particularly Mozambique and Angola. Thus the decision made earlier in the month by the Movimento Popular del Libertacao de Angola (MPLA) to declare independence encouraged FRETILIN leaders to follow a similar course. A second factor in FRETILIN's decision was the deterioration of FRETILIN's diplomatic relations with Australia and Indonesia. This deterioration was reflected in a cable from the Australian Ambassador to Indonesia wherein he noted:

We are all aware of the Australian defence interest in the Portuguese Timor situation but I wonder whether the Department has ascertained the interest of the Minister of the Department of Minerals and Energy in the Timor situation. It would seem to me that this Department might well have an interest in closing the present gap in the agreed sea border and this could be much more readily negotiated with Indonesia by closing the present gap than with Portugal or independent Portuguese Timor.

I know I am recommending a pragmatic rather than a principled stand but that is what national interest and foreign policy is all about, as even those countries with ideological bases for their foreign policies, like China and the Soviet Union, have acknowledged.

Cable from the Australian Ambassador to Indonesia to the Department of Foreign Affairs (Aug. 17, 1975) *reprinted in* DOCUMENTS, *supra* note 22, at 197-200. Having lost some of its regional support, FRETILIN thought it expedient to appeal to the world community. FRETILIN reasoned that, as a political party, it carried no weight in the world political arena and could therefore only watch helplessly as the Indonesians slowly but systematically encroached upon their territory. J. JOLLIFFE, *supra* note 1, at 216. As a sovereign nation, however, it would be possible to appeal to the world community, and in particular to the U.N., for moral and material support. According to the FRETILIN Minister for External Affairs, José Ramos Horta, FRETILIN's declaration of independence was ultimately recognized by fifteen governments: Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe, Albania, Benin, Cambodia, People's Republic of China, People's Republic of Congo (Brazzaville), Guinea (Conakry), Democratic Republic of Korea, Laos, Vietnam, and Tanzania. Interview with José Ramos Horta, *supra* note 16.

30. *Issue on East Timor, supra* note 4, at 29. For the text of this proclamation, see Letter dated December 4, 1975, from the Permanent Representative of Indonesia to the Secretary-General, U.N. Doc. A/C.4/808 (1975). The Portuguese Government rejected both the FRETILIN proclamation of independence and the pro-Indonesian parties' declaration of integration with Indonesia. See Communiqué by the Portuguese National Decolonization Commission (Nov. 27, 1975), *reprinted in* U.N. Docs. A/10403 & S/11890 (1975). Shortly after these declarations, a draft resolution was introduced in the Fourth Committee of the General Assembly. It was designed to bring all the parties together with a view towards establishing conditions that would enable the East Timorese to exercise their right to self-determination and independence in a peaceful manner and in an atmosphere of security and tranquillity, free from any threats or coercion. It also requested Portugal and all Timorese political parties to make every effort to find a peaceful solution and requested the Special Committee on Decolonization to send a fact-finding mission to the Territory as soon as possible. See 30 U.N. GAOR, C.4 (2180th mtg.) 356, 358, U.N. Doc. A/C.4/SR.2180 (1975). A revised version of the draft, circulated on December 6, added a paragraph affirming that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Purposes and Principles of the

On December 7, 1975, Indonesian forces invaded East Timor.<sup>31</sup> On December 18, Adam Malik, the Foreign Minister of Indonesia, announced the establishment of a “provisional government” in East Timor.<sup>32</sup>

At the United Nations, both the General Assembly and the Security Council reaffirmed East Timor’s right to self-determination and called for Indonesia’s withdrawal from the territory.<sup>33</sup> The Security Council also requested the Secretary-General to send a Special Representative to assess the situation first-hand.<sup>34</sup> United Nations efforts proved ineffective,<sup>35</sup> however, and support for East Timorese independence eroded

Charter of the United Nations.” The revised draft also removed a paragraph that had lauded “the positive attitude of the administering Power in making every effort to find a solution by peaceful means.” Draft resolution revision submitted by Australia, Fiji, Indonesia, Japan, Malaysia, Papua New Guinea, Philippines, and Thailand, U.N. Doc. A/C.4/L.1125 Rev. 1 (1975). *See* 30 U.N. GAOR, C.4 (2184th mtg.) 390, 396, U.N. Doc. A/C.4/SR. 2184 (1975). In retrospect, the revision, apparently instigated by Indonesia, seems to have been calculated to set up two later Indonesian arguments: (1) that Timor was part of the national territory of Indonesia and that the “integrity” of Indonesia should be preserved, *see* note 79 *infra*, and (2) that because of the “criminal negligence” of Portugal, Indonesian intervention was justified, *see* note 161 *infra*.

31. Letter dated December 7, 1975 from the Permanent Representative of Portugal to the United Nations addressed to the President of the Security Council, U.N. Doc. S/11899 (1975).

32. J. JOLLIFFE, *supra* note 1, at 272.

33. On December 11, the Fourth Committee of the General Assembly adopted a resolution deploring the Indonesian invasion and calling for the withdrawal of Indonesian troops. 30 U.N. GAOR, C.4 (2188th mtg.) 407, 412, U.N. Doc. A/C.4/SR.2188 (1975). On December 12, the General Assembly adopted a similar resolution by a vote of 72 to 10, with 43 abstentions. G.A. Res. 3485, 30 U.N. GAOR, Supp. (No. 34) 118, U.N. Doc. A/10034 (1975) [hereinafter cited as G.A. Res. 3485 (XXX)]. Of the dissenting nations, Benin rejected the resolution because it merely “deplored”, rather than “categorically condemned” Indonesia’s action. 30 GAOR, C.4 (2188th mtg.) 407, 409, U.N. Doc. A/C.4/SR.2188 (1975). India, Iran, Japan, Malaysia, Philippines, Qatar Saudi Arabia, and Thailand supported Indonesia. U.N. Doc. A/GA. 5438 at 262 (1975). The tenth “no” vote was cast by Indonesia. The Security Council unanimously called for the withdrawal of Indonesian forces and reaffirmed East Timor’s right to self-determination. S.C. Res. 384, 30 U.N. SCOR, Resolutions and Decisions 10, U.N. Doc. S/Res/384 (1975) [hereinafter cited as S.C. Res. 384].

34. S.C. Res. 384, *supra* note 33, para. 5.

35. Secretary-General Waldheim appointed Vittorio Winspeare Guicciardi, Director-General of the United Nations Office at Geneva, as his Special Representative. Report of the Secretary-General in pursuance of Security Council Resolution 384, 31 U.N. SCOR, Supp. (Jan.-Mar. 1976) 119, U.N. Doc. S/12011 (1976) [hereinafter cited as Report of the Secretary-General]. Winspeare Guicciardi contacted representatives of the interested parties in New York, Australia, Jakarta, Kupong in West Timor, and in areas under the control of the “Provisional Government,” including the enclave of Oecusse, the Island of Atauro, the capital city Dili, Matuto, and Bacau on the island’s north coast. Attempts were made in conjunction with FRETILIN officials in Australia to visit FRETILIN-held areas, but communication and transportation difficulties, aggravated by the Australian and Indonesian governments, frustrated these attempts. *Id.* at 121; J. JOLLIFFE, *supra* note 1, at 276-77 (Australian government confiscated radio link used by Winspeare Guicciardi). Air fields suggested by FRETILIN for use by the U.N. party came under Indonesian attack, apparently in an effort to sabotage this part of the mission. Report of the Secretary-General, *supra*. As a

as time passed.<sup>36</sup> Indonesia moved ahead with military operations and the incorporation of East Timor into its territory.<sup>37</sup>

The "Provisional Government" invited the United Nations Special Committee on Decolonization, the President of the Security Council, and the Secretary-General to attend the first meeting of a "Regional Popular Assembly" in Dili on May 31, 1976.<sup>38</sup> The invitations were declined.<sup>39</sup> The meeting that took place in Dili was over in less than two hours and was witnessed by seven foreign diplomats.<sup>40</sup> The "Regional Popular Assembly" unanimously adopted a resolution requesting integration with Indonesia.<sup>41</sup> On June 7, 1976, following the meeting in Dili, a delegation of the representatives of the people of East Timor formally presented to President Suharto of Indonesia a petition requesting integration.<sup>42</sup> On June 24, Indonesia dispatched a "fact-finding" mission to East Timor to ascertain the "wishes of the People."<sup>43</sup> Based on a favorable report of this fact-finding mission, the Indonesia parliament approved a bill for the integration of East Timor into Indonesia.<sup>44</sup> Despite Indonesia's declared incorporation of East

result of these events, Winspeare Guicciardi concluded that "any accurate assessment of the situation as a whole remains elusive." *Id.* at 122.

36. In contrast with the December, 1975 Security Council resolution, which was adopted unanimously, the United States and Japan, in April, 1976, abstained on a resolution that reiterated the operative paragraphs of the December resolution, S.C. Res. 389, 31 U.N. SCOR, Resolutions and Decisions 18, U.N. Doc. S/Res/389 (1976). *See Issue on East Timor, supra* note 4, at 62-63. For subsequent General Assembly action, see note 49 *infra*. The decline in support for East Timorese independence may have resulted, in part, from intense efforts by Indonesian diplomats to win support for their position. More than one foreign office found that its entire diplomatic relationship with Indonesia was "on the line" in this regard. (Author's conversations with officials and representatives at the United Nations).

37. *Issue on East Timor, supra* note 4, at 64.

38. *Id.*

39. *See id.*; Note by the President of the Security Council, 31 U.N. SCOR, Supp. (Apr.-June 1976) 65, U.N. Doc. S/12104 (1976); Report of the Secretary-General, *supra* note 35.

40. Diplomats from India, Iran, Malaysia, New Zealand, Nigeria, Saudi Arabia, and Thailand were present. *See Issue on East Timor, supra* note 4, at 37 n.157; Wash. Post, June 1, 1976, at A17, col. 3. Among other nations, Australia and Japan apparently declined similar invitations, and as a consequence, incurred the wrath of the Indonesians. J. JOLLIFFE, *supra* note 1, at 289. The Philippines was also apparently invited and had accepted; however, no representative of the Philippines was present. Sonpong, Report of the Thai Representative to the Popular Assembly (S. Miller trans. 1975) (on file with *The Yale Journal of World Public Order*) [hereinafter cited as Report of the Thai Representative to the Popular Assembly].

41. *See Issue on East Timor, supra* note 4, at 37.

42. Letter dated June 15, 1976, from the Permanent Representative of Indonesia to the Secretary-General, 31 U.N. SCOR, Supp. (Apr.-June 1976) 60-61, U.N. Doc. S/12097, Annex II (1976).

43. *Issue on East Timor, supra* note 4, at 38. Foreign diplomats and members of the press were also present during the mission's visit. INDONESIA DEP'T OF INFORMATION, PROCESS OF DECOLONIZATION IN EAST TIMOR 38 (1976).

44. N.Y. Times, July 18, 1976, at A7, col. 1. For an unofficial translation of this bill, see

Timor into the Republic of Indonesia, FRETILIN military activity continued on a significant scale until 1978-79.<sup>45</sup> This activity appears to be continuing, but at a lower level.<sup>46</sup>

In December, 1976, the General Assembly again called upon Indonesia to withdraw its forces and deplored its failure to comply with the previous General Assembly and Security Council resolutions.<sup>47</sup> It rejected the claim that East Timor had been integrated into Indonesia, declaring that the people had not been able to exercise freely their right to self-determination. Resolutions critical of the Indonesian actions have been passed in each subsequent session of the General Assembly.<sup>48</sup> Nevertheless, Indonesian diplomacy gradually eroded the support formerly shown for East Timor.<sup>49</sup>

## II. Self-Determination and East Timor

The Indonesian invasion and occupation of East Timor violate two fundamental norms of international law. First, Indonesia's actions deprived East Timor of its right to self-determination. Second, military intervention into East Timor constituted an act of aggression forbidden by the United Nations Charter and customary law. The United Nations itself deplored the invasion and called for the withdrawal of Indonesian troops.<sup>50</sup>

Indonesia has disputed that its acts are invalid. But defenses asserted explicitly, as well as those suggested in Indonesia's public statements, fail adequately to rebut charges that it has violated the principle of self-determination and engaged in unjustifiable and illegal acts of

INDONESIA DEP'T OF FOREIGN AFFAIRS, DECOLONIZATION IN EAST TIMOR, Annex XIII (1976).

45. See Kamm, *supra* note 1, at 62.

46. *Id.* at 35; Jolliffe, *Refugees Still Talk of Famine and Repression*, in EAST TIMOR INTERNATIONAL CONFERENCE REPORT 7, 10 (1981).

47. G.A. Res. 31/53, 31 U.N. GAOR, Supp. (No. 39) 125, U.N. Doc. A/31/362 (1976).

48. G.A. Res. 32/34, 32 U.N. GAOR, Supp. (No. 45) 169, U.N. Doc. A/32/357 (1977); G.A. Res. 33/39, 33 U.N. GAOR, Supp. (No. 45) 181, U.N. Doc. A/33/455 (1978); G.A. Res. 34/40, 34 U.N. GAOR, Supp. (No. 46) 206, U.N. Doc. A/34/46 (1979); G.A. Res. 35/27, 35 U.N. GAOR (Agenda Item 85) 1-3, U.N. Doc. A/Res/35/27 (prov. ed. 1980).

49. The 1980 resolution was adopted by a vote of 58 to 35 with 46 abstentions and a further 14 states "absent." See Resolutions and Decisions Adopted by the General Assembly During the First Part of its Thirty-Fifth Session 375-76, U.N. Doc. GA/6375 (1981). Indonesia, however, continues to be unsuccessful in preventing the question of East Timor from being included on the agenda of the General Assembly. In 1980, for example, Indonesia made an unsuccessful effort in the General Committee of the General Assembly (which handles the agenda) to have the matter dropped. See U.N. Doc. A/BUR/35/SR. 1 at 13-14 (1980).

50. G.A. Res. 3485, 30 U.N. GAOR, Supp. (No. 34) 118, U.N. Doc. A/10426 (1975); S.C. Res. 384, *supra* note 33; S.C. Res. 389, 30 U.N. SCOR, Resolutions and Decisions 18, U.N. Doc. S/Res/389 (1975).

aggression.<sup>51</sup>

Indonesia has offered three explanations of its efforts to integrate East Timor in terms of self-determination. First, Indonesia has argued that integration with Indonesia is the will of the East Timorese people and thus constitutes self-determination. Second, Indonesia has suggested that, regardless of any explicit consent to integration, the historical, ethnic, cultural, and geographical ties between Indonesia and East Timor establish East Timor as an integral part of the Indonesian archipelago. If one accepts this proposition, administration of East Timor by any authority other than Indonesia violates Indonesia's territorial integrity and conflicts with United Nations doctrine. Finally, Indonesia has argued that East Timor is not economically viable and requires direction and assistance from an economically stable state before it can be expected to survive as an independent state.

None of these defenses withstands scrutiny. Reviewing each argument merely underscores the illegality of Indonesia's actions.

#### A. *East Timorese "Expressions of Will"*

United Nations doctrine recognizes that non-self-governing territories have the right to self-determination.<sup>52</sup> That right entitles each ter-

51. Indonesia has not made a comprehensive legal case for its actions. Its positions have been gleaned mainly from the statements of its representatives in the General Assembly and the Security Council and from three Indonesian publications: INDONESIA DEP'T OF INFORMATION, PROCESS OF DECOLONIZATION IN EAST TIMOR (1976); INDONESIA DEP'T OF FOREIGN AFFAIRS, DECOLONIZATION IN EAST TIMOR (1976); Nahar, *Some Historical Notes on Timor Island*, INDONESIA NEWS AND VIEWS, Nov. 8, 1975 at 1. The author is indebted to Mr. Juwana of the Indonesian Mission to the United Nations for providing him with information on the Indonesian point of view.

52. Self-determination is recognized as a fundamental international norm in the Charter of the United Nations. See U.N. CHARTER arts. 1, 55, 56. International law has recognized that the principle of self-determination applies to all non-self-governing territories. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, [1971] I.C.J. 16, 31. The Advisory Opinion on Western Sahara defended the universality of the principle of self-determination, despite the fact that:

in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a "people" entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances.

Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 33.

The principle of self-determination has been defined as "the need to pay regard to the freely expressed will of peoples." *Id.* See Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR, Supp. (No. 16), 66, U.N. Doc. A/4684 (1960) [hereinafter cited as G.A. Res. 1514(XV)]; Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, U.N. Doc. A/8082 (1970). For a general discussion of the right of self-deter-



ritory to choose the status it will assume on completing decolonization.<sup>53</sup> General Assembly resolutions recognize that territories have at least three alternatives: emergence as a sovereign state, free association with an independent state, or integration with a sovereign state.<sup>54</sup>

Indonesia contends that it did not deprive East Timor of self-determination because, by four acts, the East Timorese people indicated their preference for integration with Indonesia. The four acts include the November, 1975 Proclamation by four parties sympathetic to union with Indonesia,<sup>55</sup> the May, 1976 resolution of the East Timor "Regional Popular Assembly,"<sup>56</sup> the subsequent petition to the Indonesian president and parliament,<sup>57</sup> and the Indonesian fact-finding mission of June, 1976.<sup>58</sup>

None of these acts satisfies the conditions set forth by the General Assembly for a legitimate and genuine expression of will to integrate with a sovereign state. Principle IX of G.A. Resolution 1541(XV) (Principle IX) provides that:

- (a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes.
- (b) The integration should be the result of the freely expressed wishes of the Territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.<sup>59</sup>

mination, see R. EMERSON, SELF-DETERMINATION REVISITED IN AN ERA OF DECOLONIZATION (1964); A. RIGO-SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION (1973); C. TOUSSAINT, THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS (1956); SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS (Y. Alexander & R. Friedlander eds. 1980); Chen, *Self-Determination as a Human Right*, in TOWARD WORLD ORDER AND HUMAN DIGNITY 198 (W. Reisman & B. Weston eds. 1976).

53. Self-determination has been identified as a right of all peoples and as a means to bring colonial situations to a speedy conclusion. See G.A. Res. 1514(XV), *supra* note 52; Advisory Opinion on Western Sahara [1975] I.C.J. 12, 32.

54. These alternatives may not exhaust the alternatives available to territories. See Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, 124, U.N. Doc. A/8082 (1970) (accepting as valid alternatives "any other political status freely determined by a people").

55. See text accompanying note 30 *supra*.

56. See text accompanying note 41 *supra*.

57. See text accompanying note 42 *supra*.

58. See text accompanying notes 43-44 *supra*.

59. G.A. Res. 1541 (XV), *supra* note 5.

Two of the four acts do not even pretend to satisfy Principle IX. Neither the November, 1975 proclamation issued by the coalition of four parties, nor the June, 1976 fact-finding mission resembled in any way the plebiscite required by Principle IX.

The remaining two acts cited by Indonesia, the East Timor Popular Assembly and the subsequent petition to Indonesia presented by delegates of the representatives of East Timor, did pay at least lip service to the spirit of Principle IX.<sup>60</sup> On review, however, they also prove inadequate. Contrary to Principle IX, the representatives to the Regional Popular Assembly were not elected by a process respecting universal adult suffrage. In any event the election was not impartially conducted. There is no evidence that the people of East Timor understood the consequences of the available choices, and little evidence to suggest that East Timor had achieved that stage of self-government necessary for a people to shape its destiny. As the Regional Popular Assembly was unlawfully chosen, the petition it subsequently presented to Indonesia was also unlawful.

#### 1. *"Universal Adult Suffrage"*

A law passed by the "Deliberative Council of East Timor," a body created at the same time as the "Provisional Government of East Timor," established the formalities for convening the Regional Popular Assembly.<sup>61</sup> The Act provided that the Regional Popular Assembly be composed of the "Deliberative Council of East Timor," supplemented by representatives from each of the thirteen *Conselhos* or districts of East Timor. In each district, a *Conselho* Popular Assembly was to be formed that would choose the district's two or three representatives to the Regional Assembly.<sup>62</sup>

Even if the Regional Popular Assembly was designed to represent the will of the East Timorese people, it fell far short of satisfying the standards of Principle IX. First, representatives to the Regional Assembly were not elected according to the principle of universal adult suffrage. Rather, the Act provided that "[s]olely in the capital City of

60. See *Issue on East Timor*, *supra* note 4, at 37.

61. Act No. 1/A.D. 1976 of the "Provisional Government of East Timor", reprinted in Report of the Secretary-General pursuant to Security Council resolution 389 (1976), 31 U.N. SCOR, Supp. (Apr.-June 1976) 66, U.N. Doc. S/12106, Appendix (1976) [hereinafter cited as Act No. 1/A.D. 1976].

62. *Id.* For a description of the Portuguese administrative structure, which introduced the system of the thirteen *Conselhos*, see Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 22 U.N. GAOR, I Annex (Agenda item 23) 59, U.N. Doc. A/6700/Rev. 1 (1967).

Dili representatives for the *Conselho* Popular Assemblies and the Regional Popular Assembly will be elected in accordance with the [principle of] one man/one vote.” In the other districts representatives to the *Conselhos* Popular Assemblies were to be chosen in accordance with the tradition and identity of the people of East Timor, meaning a representative system by means of “consensus and consent.”<sup>63</sup> As a result, only five of twenty-eight representatives to the “Regional Popular Assembly” were elected by popular vote.<sup>64</sup>

The absence of a public record of the proceedings makes it particularly difficult to determine who in fact participated in the elections and whether district elections represented the will of the people. It has, indeed, been asserted that only five of the twenty-eight delegates who participated in the proceedings were actually elected.<sup>65</sup>

## 2. “Processes Impartially Conducted”

It is also doubtful that the Regional Popular Assembly was conducted impartially, as required by Principle IX. Although Principle IX does not require United Nations observation of a consultation, the United Nations, in fact, has a long history of involvement in consultations with populations, and, in some circumstances, has provided some assurance of the impartiality of the electoral process.<sup>66</sup> The United Na-

63. Act No. 1/A.D. 1976, *supra* note 61, arts. 2, 5. What the law meant by “consensus and consent,” which must refer to something other than one person, one vote, is unclear and remains unexplained. The law apparently envisaged some form of consultation of traditional leaders, but the nature and extent of any such consultation has not been revealed.

64. It might be suggested that conditions in East Timor were such that a consultation based on one person, one vote could not have been achieved within a reasonable period of time after the 1974 Portuguese change of government. However, it should be noted that in cases where a status other than independence was considered by the United Nations, an expression of will has almost invariably been ascertained by an election or referendum conducted on this basis—regardless of how difficult conditions might have made efforts to conduct such a vote. For a discussion of examples of such referenda, see note 67 *infra* (British Togoland, Northern Cameroons, Southern Cameroons) and note 75 *infra* (Cook Islands, Niue, Marina Islands, Papua New Guinea).

65. S. NICTERLEIN, 2 THE STRUGGLE FOR EAST TIMOR 26 (mimeo. 1979) (on file with *The Yale Journal of World Public Order*).

66. The United Nations has regularly supervised plebiscites leading to integration of former colonies with independent states. It supervised plebiscites that led to the union of British Togoland with the Gold Coast to form Ghana in 1956, the Northern Cameroons with Nigeria in 1961, and the Southern Cameroons with the Cameroun Republic in 1961. U.N. Dep’t of Political Affairs, Trusteeship and Decolonization, *Fifteen Years of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples*, DECOLONIZATION, Dec., 1975, at 19 [hereinafter cited as *Fifteen Years*]. Although United Nations involvement in an alleged act of self-determination generally contributes to the legitimacy and impartiality of the proceeding, the U.N.’s participation in the West Irian “act of free choice” resulting in integration with Indonesia represents a stain on the U.N.’s record. The U.N. acquiesced in a consultation that did not recognize the principle of one person, one vote. Moreover, the consultation effectively was conducted by Indonesia which “exercised at all times a tight political control over the population.” Report of the Secretary-

tions, however, declined to supervise the East Timor consultation, and the observers that were present were diplomats from states arguably sympathetic to Indonesia.<sup>67</sup> In any event, the conditions under which the diplomats observed the Assembly left them little opportunity to observe. Neither the diplomats nor attending journalists were permitted to interview members of the Assembly.<sup>68</sup> Moreover, because the speeches were delivered in Portuguese, many of the diplomats and journalists were unable to understand them.<sup>69</sup> The fact that the report of only one observer is available casts further doubt on what role, if any but a cosmetic one, the diplomats were expected to play and were able to play.<sup>70</sup>

General Regarding the Act of Self-Determination in West Irian, 24 U.N. GAOR, 2 Annexes (Agenda Item 98) 2, at 20, U.N. Doc. A/7723, Annex 1 (1969). While the General Assembly did not approve the result of the "act of free choice," it passed a resolution taking note of this act. See G.A. Res. 2504, 24 U.N. GAOR, Supp. (No. 30) 3, U.N. Doc. A/7630 (1969). This resolution passed by a vote of 84-0, with 30 abstentions. 24 U.N. GAOR, (1813th mtg.), 1, at 17, U.N. Doc. A/PV. 1813 (1969).

67. See note 40 *supra* (list of nations that sent observers). India, Iran, Malaysia, Saudi Arabia, and Thailand all voted in support of Indonesia. New Zealand abstained. Of the seven states that had sent representatives to the "Popular Assembly," only Nigeria voted for the resolution. See G.A. Res. 3485 (XXX), *supra* note 33. Nigeria has abstained in General Assembly votes on the subject since 1978. Since 1979, New Zealand, on the other hand, has voted with Indonesia.

Several factors may explain this pattern of voting. Iran and Saudi Arabia apparently have cast their votes to support a fellow Islamic state or OPEC member. While Nigeria can be similarly described, its performance in the General Assembly indicates a continuing sentiment in favor of genuine self-determination for East Timor. This sentiment is perhaps a reflection of Nigeria's own colonial experience. Malaysia and Thailand, like Indonesia, are members of the Association of South East Asian States (ASEAN). (The other two ASEAN members, the Philippines and Singapore, have also supported Indonesia, the Philippines with some enthusiasm. The Philippines had accepted an invitation to attend the meeting in Dili but its representative did not arrive). Since Britain entered the European Economic Community, an action that resulted in New Zealand's losing a substantial portion of the British market for agricultural goods, New Zealand has made a substantial effort to convince South East Asian states that it has a significant stake in the area. While Indonesia does not conduct substantial trade with New Zealand, as the largest ASEAN member it is perceived by New Zealand to be the key to New Zealand's diplomacy in the area. India was perhaps still grateful to Indonesia for its diplomatic support at the time of India's invasion of Goa in 1961. It may also have been embarrassed by the way it had absorbed its protectorate, Sikkim, in 1974-75, and saw some similarities between that action and the Indonesian incorporation of East Timor.

68. The Times (London), June 1, 1976, at 6, col. 1; Wash. Post, June 1, 1976, at A17, col. 3.

69. See Letter from the New Zealand Minister of Foreign Affairs to Roger Clark (May 15, 1981) (on file with *The Yale Journal of World Public Order*).

70. The role of the United Nations or other observer group in an act of self-determination is to ensure impartiality and fairness. The failure of the seven diplomats at the Popular Assembly to make public reports contrasts sharply with the practice of United Nations observers, see *supra* note 66, and with the observers at the 1980 Zimbabwe elections who published their reports, see 1980 KESING'S CONTEMPORARY ARCHIVES 30373.

The author endeavored to obtain copies of the reports from each of the seven governments. The Thai Mission to the United Nations kindly transmitted a four-page report (in Thai). The report is a factual account of events and is somewhat critical of the haste with

The absence of effective third party supervision of the Regional Assembly is particularly troublesome in view of the many reasons to suspect that the entire process was a sham conducted either by the Indonesians themselves, or by factions under their influence. The Assembly was conducted under the auspices of the "Deliberative Council of East Timor,"<sup>71</sup> which insisted on speedy proceedings.<sup>72</sup> Even if the Council and the Assembly were not controlled by the Indonesian government, there is every reason to believe both were composed of people

which the Assembly was convened and of the absence of its consideration of any alternative other than integration with Indonesia. *See* Report of the Thai Representative to the Popular Assembly, *supra* note 40. The New Zealand Minister of Foreign Affairs wrote:

While I am not prepared to release the full text of the report—which was a confidential report to the New Zealand Government—I have no objection to letting you know the gist of the document.

In short, while the observer's assessment was that the Council in a "serious, business-like and formal way" unanimously endorsed integration with Indonesia, the occasion left a number of unanswered questions surrounding the self-determination process in East Timor. Subsequent to this event, the New Zealand Government continued to press Indonesia, as a fellow member of the United Nations, to do what it could to get the United Nations involved in the self-determination process.

You raise the question of the language in which the proceedings took place. The proceedings were in Portuguese and apparently only some parts of it were translated into English. Our observer does not speak Portuguese but made an informal arrangement to have a "running commentary" provided by a Timorese. This was, however, very much a second best to being provided with a full and accurate translation.

Letter from the New Zealand Minister of Foreign Affairs to Roger Clark (May 15, 1981) (on file with *The Yale Journal of World Public Order*).

The Counsellor to the Indian Mission to the United Nations wrote:

Regrettably, we are unable to send you a copy of the Ambassador's report as it is a confidential document which has not yet been released to the public. But it might be of interest to you to know that our Ambassador felt that since the village chiefs attended the Assembly, there was obviously consensus among the people of East Timor in favour of integration with Indonesia.

Letter from the Counsellor to the Indian Mission to the United Nations to Roger Clark (Jan. 29, 1981) (on file with *The Yale Journal of World Public Order*).

The Chargé d'Affaires of Saudi Arabia reported, "I am sorry to inform you that the gentleman in question was unable to present a report to the Government due to the fact that he died of a heart attack four days after the meeting mentioned in your letter." Letter from the Chargé d'Affaires of Saudi Arabia to Roger Clark (Jan. 22, 1981) (on file with *The Yale Journal of World Public Order*). No substantive replies were received from the other governments involved.

71. No explanation of the origin of the Deliberative Council, sometimes referred to as the Advisory Council, appears in the various documents forwarded to the Secretary-General by Indonesia, or in the Report of the Secretary-General pursuant to Security Council resolution 389, 31 U.N. SCOR, Supp. (Apr.-June 1976) 66, U.N. Doc. S/12106 (1976). In remarks to the Security Council in April, 1976, Mr. Guilherme Goncalves, Chairman of the Advisory Council of the "Provisional Government," stated that the Council was established to help the "Provisional Government" in reaching "important decisions," and was to function as a provisional assembly pending the appointment of the People's Assembly. 31 U.N. SCOR (1908th mtg.) 71, U.N. Doc. S/PV. 1908 (1976). Because there is no reference in any source to an election for the Council, its members were presumably "appointed." Whether it adopted any laws other than Act No. 1/A.D. 1976, *supra* note 61, is not known.

72. The Assembly completed its business in under two hours, so any debate by necessity would have been brief. Wash. Post, June 1, 1976, at A17, col. 3.

sympathetic to integration with Indonesia.<sup>73</sup> In any event, it cannot be said with conviction that the consultation was impartially conducted; integration was the only item on the Assembly's agenda and no other alternatives appear to have been debated.<sup>74</sup>

### 3. "Full Knowledge"

Principle IX also provides that the Territory's peoples should make a responsible choice with "full knowledge of the change in their status." The United Nations has frequently insisted that authorities undertake an educational campaign fully and fairly presenting the relevant issues. There is no record that such a campaign was launched. Nor is there any evidence to suggest that the East Timorese people were well-informed about or had any access to information regarding the consequences of integration with Indonesia. That the consultation and designation of representatives took place during the Indonesian occupation and continuing fighting suggests that, at best, the people were acting under circumstances unlikely to foster an informed and respon-

73. *Id.*; The Times (London), June 1, 1976, at 6, col. 1.

74. No U.N. or neutral third-party observers were present for the selection of the representatives to the Assembly. The observers present at the actual meeting of the Assembly itself were not able to determine the representativeness of the proceedings. Wash. Post, June 1, 1976, at A17, col. 3. See text accompanying notes 68-70 *supra*. Moreover, the armed conflict in East Timor—whatever its origin and nature—with its resulting dislocation and starvation, reduced the ability of the East Timorese fully to exercise their right to self-determination according to the intent of G. A. Res. 1514(XV), *supra* note 52. See Kamm, *supra* note 1; Anderson, *supra* note 1.

It is instructive to contrast the formation and actions of the "Deliberative Council" and the Regional Popular Assembly with other exercises of the right of self-determination. The United Nations has a long history of involvement with consultations of population prior to an act of self-determination. See *Fifteen Years*, *supra* note 66, at 19-22. In cases where a status other than independence was considered, an election or referendum conducted on the basis of one person, one vote has been the usual practice—no matter how difficult to achieve, given the level of development of the society concerned. See, e.g., Report of the United Nations Special Representative for the Supervision of the Elections in the Cook Islands, U.N. Doc. A/AC.109/L.228 (1965); Report of the United Nations Special Mission to Observe the Act of Self-Determination in Niue, U.N. Doc. A/AC.109/L.982 (1974); Report of the United Nations Special Mission to Observe the Plebiscite in the Mariana Islands District, Trust Territory of the Pacific Islands, June 1975, 43 U.N. TCOR, Supp. (No. 2) 27-30, 41, U.N. Doc. T/1771 (1976). Because the General Assembly regarded East Timor as also subject to Chapter XI of the Charter, the precedents of such referenda should have applied.

Furthermore, any argument that conditions in East Timor could not have permitted a consultation based on one person, one vote within a reasonable time after the Portuguese change of government in 1974 must be viewed in the light of Australia's success at organizing such elections in Papua New Guinea since 1964. J. RYAN, *THE HOT LAND* 371 (1969). Conditions in Papua New Guinea in 1964 were roughly comparable to those in East Timor ten years later—at least prior to the Indonesian invasion. The United Nations observed one of the Papua New Guinea elections in 1972 and went to great length to commend the thoroughness and fairness with which it had been conducted. Report of the United Nations Visiting Mission to Observe the Elections to the Papua New Guinea House of Assembly in 1972, 39 U.N. TCOR, Supp. (No. 2) 33-38, U.N. Doc. T/1739 (1972).

sible choice.<sup>75</sup>

#### 4. *“Advanced Stage of Self-Government”*

For similar reasons, it is unlikely that the consultation with the East Timorese people satisfied the provision of Principle IX declaring that the “territory should have [already] attained an advanced stage of self-government with free political institutions.” It can hardly be said that the Portuguese did much to put the Territory in such a state.<sup>76</sup> Arguably, during its *de facto* control of the country from September to December, 1975, and possibly during the earlier period of its coalition with UDT, FRETILIN had facilitated East Timor’s advancement toward self-government. But whatever success FRETILIN had was certainly destroyed by the Indonesian invasion.

In view of the deficiencies of the four acts said to express the will of the East Timorese people and the non-compliance with Principle IX, the U.N. refused to recognize that the East Timorese had exercised self-determination. Indonesia’s reliance on these four events as genuine acts of will proved unacceptable to most States. Consequently its invasion and occupation of East Timor, as well as its formal declaration of integration, must be judged grave violations of East Timor’s right to self-determination.

#### B. *“Historic, Ethnic, and Cultural Ties” Between Indonesia and East Timor*

Indonesia has made several statements appealing to the geographic, historic, ethnic, and cultural ties uniting it with East Timor. All of them suggest that East Timor is an integral part of the Indonesian nation. Though Indonesia has not explicitly relied upon these observations to defend its invasion of East Timor, it used similar arguments to justify its integration of West Irian.

Shortly before the Indonesian invasion, the Indonesian representative to the Fourth Committee, while defending Indonesia’s interest in the peace and stability of East Timor, pointed out the geographical, cultural, and ethnic ties between Portuguese or East Timor and Indonesian Timor:

The 450 years of division resulting from colonial domination had not diminished the close ties of blood and culture between the people of the Territory and their kin in Indonesian Timor. That geographical proximity and ethical [*sic*] kinship were important reasons for Indonesia’s con-

75. See text accompanying notes 31-42 *supra*.

76. See text accompanying note 27 *supra*.

cern about peace and stability in Portuguese Timor, not only in its own interest, but also in the interest of Southeast Asia as a whole.<sup>77</sup>

The President of Indonesia forcefully made this geographic and ethnic argument at the time of the incorporation of East Timor into Indonesia. On that occasion, he emphasized historical connections with East Timor.

This archipelago was once united, with an area approximately the size of the present territory of the unitary State of the Republic of Indonesia. History noted the famous Srivijaya Kingdom, as well as the well-known Majapahit Kingdom.

But history should also note an inglorious chapter and a misfortune that befell us. For three and a half centuries we were a colonized nation, our soul was oppressed and our body exploited. As I have mentioned earlier, we were separated from our own brothers, we were splintered into small groups. But the heritage of sharing one common destiny had never disappeared. The spirit to become independent had never been quenched.<sup>78</sup>

The symbolic appeal of the ancient empires of Srivijaya and Majapahit has proved to be an extremely powerful rhetorical device in the hands of Indonesian leaders. It was used in 1945 when President Sukarno first spoke in favor of uniting within an independent Indonesia the territories it allegedly controlled at the time of the Srivijaya and Majapahit kingdoms. He contended then that a fully restored Indonesian nation would include East Timor.<sup>79</sup> The case is a weak one. The exact extent of the Srivijaya and Majapahit empires, and their legal ties to the outlying part of the Indonesian archipelago, including Timor, are lost in history.<sup>80</sup> If anything, the ethnic and cultural roots of the East

77. 30 U.N. GAOR, C.4 (2180th mtg.) 359, U.N. Doc. A/C.4/SR. 2180 (1975).

78. Statement by President Suharto in response to the address presented by the delegation of the Provisional Government of East Timor, *reprinted in* 31 U.N. SCOR, Supp. (Apr.-June 1976) 62-64, U.N. Doc. S/12097, Annex V (1976).

79. Srivijaya and Majapahit were recalled by Sukarno in his famous *Pantja Sila* (Five Principles) Speech of June 1, 1945, in which he asserted that "the national state is only Indonesia in its entirety, which existed at the time of Srivijaya and Majapahit, and which now, too, we must set up together." B. GRANT, *INDONESIA* 30 (1967). However, no claim was made to East Timor at the time of the formal declaration of Indonesian independence in August, 1945, and any aspirations for its incorporation were expressly disavowed by Indonesia in the 1950s and 60s, *see* note 18 *supra*.

80. The most explicit expression of the "ethnic ties" argument appears in a November, 1975 press release from the Indonesian Embassy in Washington. *See Nahar supra* note 51. It makes the point that Timor is geographically part of the Indonesian archipelago. It then argues that "[e]thnically, the people living in the Portuguese controlled part of the island of Timor (East Timor) are the same as the people of Indonesia. . . ." *Id.* at 1. The statement maintains that, in the past, Timor was under the administration of the Srivijaya and Majapahit empires.

The Buddhist kingdom of Srivijaya, established in Sumatra in the seventh century, was the first important political unit with connections throughout the Indonesian archipelago.



Timorese people and the Indonesians suggest that they are distinct peoples.<sup>81</sup> Moreover, any attempt on the part of Indonesia to defend its invasion on the basis of its historical ties to East Timor is in direct conflict with its own prior refutations of any intent to claim East Timor as its rightful territory.<sup>82</sup>

Timor, however, is not mentioned among the vassals of Srivijaya in the leading work in English, G. COEDES, *THE INDIANIZED STATES OF SOUTHEAST ASIA* (1968). At its zenith, the empire may have extended only to the western part of Java. See G. COEDES, *THE MAKING OF SOUTHEAST ASIA* 95 (1967). One commentator has characterized Srivijaya as a federation of trading ports on the Sumatran coast and important islands off the coast. O. WOLTERS, *THE FALL OF SRIVIJAYA IN MALAY HISTORY* 9 (1970). An earlier work by the same author, O. WOLTERS, *EARLY INDONESIAN COMMERCE* (1967), deals with the origin of the empire but does not in any way clarify the position of Timor with respect to it. In any event, by the thirteenth century its power had waned and the focus of political power shifted to Java with the establishment of the Hindu kingdom of Majapahit in 1292.

Scholarly literature discussing the ancient Indonesian empires supports at best a tenuous tributary relationship between Timor and the Majapahit empire. That empire included most of the area which later became the Dutch East Indies. G. COEDES, *THE INDIANIZED STATES OF SOUTHEAST ASIA* 239-40 (1968). Writings from the period suggest that Timor sent tribute to the Majapahit court. See B. GRANT, *supra* note 79, at 8; 4 T. PIEGEAUD, *JAVA IN THE FOURTEENTH CENTURY* 29-35 (1962). Pigeaud, however, considers it doubtful that Majapahit authority was at any time of much consequence in most of the areas mentioned by the ancient writers and notes that the writers' knowledge of geography seems uneven. *Id.* Majapahit lasted for about two centuries before disintegrating with the arrival of Islam and, later, the western colonialists. *INDONESIA: THE SUKARNO YEARS* 3 (H. Kosut ed. 1967). Thus, even if the two kingdoms extended so far as to Timor, these ties were crumbling before the first Portuguese made contact with the island in 1512 and certainly were in abeyance before the first serious colonization effort by the Dutch in 1651. *Issue on East Timor*, *supra* note 4, at 6. References to the two ancient empires were also made in arguments concerning the inclusion of West Irian in Indonesia and during the "confrontation" with Malaysia over the inclusion of North Borneo and Sarawak in that country. S. NICTERLEIN, *I THE STRUGGLE FOR EAST TIMOR* 13 (mimeo. 1978) (on file with *The Yale Journal of World Public Order*).

81. So far as the geographic proximity of Timor to the rest of the Indonesian Archipelago is concerned, no one has suggested seriously that the post-colonial world must be a "tidy" one and no claim based solely on geographic contiguity has ever been given the slightest countenance by the United Nations.

On the facts, the ethnic similarity argument carries little weight. The heart of the Indonesian Republic is Java and Sumatra. The Timorese probably have more in common with the Melanesians of Papua New Guinea in terms of racial characteristics and language than they do with the Javanese and Sumatrans. Mr. Ramos Horta stressed this argument before the Security Council. 31 U.N. SCOR (1908th mtg.) 23, U.N. Doc. S/PV. 1908 (1976). Perhaps because of these difficulties, Indonesia has not made an express claim to East Timor exclusively based on ethnic ties. East Timor does, of course, have ethnic ties with West Timor as well as Molucca and West Irian, all areas encompassed by the Indonesian Republic. All of these areas, however, are on the outer fringes of Indonesia and their ethnic ties with the heartland of the Republic hardly seem of such importance as to eclipse the right of the East Timorese to determine their own status. If, theoretically, the ethnic linkage is as strong and important as Indonesia seems to think, an exercise in self-determination by the East Timorese would result in a vote to join their "brothers" as a part of the Indonesian Republic. Moreover, any ties which may have existed in the fifteenth century have certainly become much weaker today. This would occur not merely through the inevitable passage of time, but also through the impact of four hundred years of colonial administration by various Western powers; the Portuguese and the Dutch, themselves very different.

82. See text accompanying notes 17-18 *supra*. In addition to undercutting the geo-

1. "Legal" Bases of Indonesian Claims: *The Western Sahara Opinion*

Indonesia's arguments are rooted in historical inaccuracies. Indonesia never fully articulated the significance of the historical origins allegedly shared by East Timor and the rest of the Indonesian archipelago. Quite possibly, Indonesia had in mind the argument that for certain former colonial territories, self-determination is synonymous with

graphic, ethnic, and historical case, Indonesia's previous statements arguably support a further substantive argument against its actions. Previous decisions of the I.C.J. indicate that in certain circumstances states may be bound by "unilateral declarations." In the *Legal Status of Eastern Greenland*, [1933] P.C.I.J. ser. A/B, No. 53, it was held that Norway was bound by a declaration of its Foreign Minister, made in the context of negotiations with Denmark, that "the plans of the Royal [Danish] Government respecting Danish sovereignty over the whole of Greenland . . . would meet with no difficulties on the part of Norway." *Id.* at 58. Later steps by Norway to occupy parts of Greenland accordingly were held to be "unlawful and invalid." *Id.* at 75. Even if the declaration did not constitute a definitive recognition of Danish sovereignty over Greenland, it did constitute an obligation on the part of Norway to refrain from contesting Danish sovereignty over Greenland. The doctrine of the *Eastern Greenland Case* was carried somewhat further by a bare majority of the Court in the *Nuclear Tests Cases, Australia v. France*, [1974] I.C.J. 253, 267-68; *New Zealand v. France*, [1974] I.C.J. 457, 472-73. The French Government, in a series of statements, announced its intention to discontinue atmospheric testing in the Pacific. These statements had not been made specifically in the course of diplomatic negotiations with the Applicant States, Australia and New Zealand. Nevertheless, the Court held that they were binding on the French Government.

It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a *quid pro quo* nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made.

[1974] I.C.J. at 267; [1974] I.C.J. at 472.

What is meant in these cases by the manifestation of an intent to be bound is obscure, but the Indonesian statements appear to show as much intent as the statement in these cases. The Malik statement to Ramos Horta is similar to the statement of the Norwegian Foreign Minister in that it was made in a "diplomatic" setting with Ramos Horta. It is distinguishable from that statement, however, in that it was not made to a representative of a government. FRETILIN would no doubt argue that Ramos Horta was the representative of a "people" at the relevant time and that this should be sufficient. Indonesia's other statements are similar to statements of the French government and thus could be relied upon by the world at large including FRETILIN and the people of East Timor. The binding effect of the Indonesian statements was espoused in the June, 1981 decision of the Permanent Peoples' Tribunal sitting in Lisbon. See *Session of the Permanent People's Tribunal on East Timor*, *supra* note 1, at 16 (citing the *Nuclear Tests Case*). *But see* Rubin, *The International Legal Effects of Unilateral Declarations*, 71 AM.J.INT'L L. 1 (1977) (expressing some skepticism about the doctrinal basis of the Court's analysis of the unilateral declaration rule, especially as formulated in the *Nuclear Tests Case*). See generally I. BROWNLEE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 637-38 (3d ed. 1979).

reincorporation into the greater entity of which it was a part before the colonial occupation.<sup>83</sup> This attitude arguably derives from the events surrounding the *Western Sahara* Opinion and paragraph six of General Assembly Resolution 1514(XV),<sup>84</sup> but in fact, they do not provide support for Indonesia's position.

The International Court of Justice confronted the "historical origins" argument in its Advisory Opinion on *Western Sahara*.<sup>85</sup> The case arose as a result of an attempt by Morocco and Mauritania to prevent independence for the Western Sahara. Instead, each government hoped to incorporate part of Western Sahara into its own territory.<sup>86</sup> In order to delay a referendum that had been recommended by the U.N., Morocco and Mauritania argued that, before colonial occupation, Western Sahara constituted an integral part of their territories and that such historical ties merited consideration in shaping decolonization.<sup>87</sup> United

83. Assertions of a precolonial right to decolonized territories have been advanced with some success by India and China. India used such an argument to defend its armed seizure of the Portuguese territories (Goa, Damao, and Diu) in December, 1961. See Wright, *The Goa Incident*, 56 AM. J. INT'L L. 617 (1962). India also argued that it was necessary to act to deal with disturbances within Goa and to respond to Portuguese border incursions. N.Y. Times, Dec. 19, 1961, at 14, col. 3. See note 88 *infra*.

Shortly after the government of the People's Republic assumed the Chinese seat at the United Nations, its representative wrote to the Chairman of the Special Committee With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

As is known to all, the questions of Hong Kong and Macau belong to the category of questions resulting from the series of unequal treaties left over by history, treaties which the imperialists imposed on China. Hong Kong and Macau are part of Chinese territory occupied by the British and Portuguese authorities. The settlement of the questions of Hong Kong and Macau is entirely within China's sovereign right and does not fall under the ordinary category of 'colonial Territories.' Consequently, they should not be included in the list of colonial Territories covered by the Declaration on the Granting of Independence to Colonial Countries and Peoples. With regard to the questions of Hong Kong and Macau, the Chinese Government has consistently held that they should be settled in an appropriate way when conditions are ripe. The United Nations has no right to discuss these questions. For the above reasons, the Chinese delegation is opposed to including Hong Kong and Macau in the list of colonial Territories covered by the Declaration and requests that the erroneous wording that Hong Kong and Macau fell under the category of so-called 'colonial Territories' be immediately removed from the documents of the Special Committee and all other United Nations documents. March 8, 1972 from the Permanent Representative of China to the United Nations addressed to the Chairman of the Special Committee, U.N. Doc. A/AC.109/396 (1972). Hong Kong and Macau were removed from the Committee's list.

The rationale seems to have been that if Hong Kong and Macau were left on the list of non-self-governing territories, the inference might be drawn that independence was a future option for them.

84. G.A. Res. 1514 (XV), *supra* note 52, at para. 6.

85. Advisory Opinion on *Western Sahara*, [1975] I.C.J. 12.

86. Franck & Hoffman, *supra* note 1, at 339.

87. Advisory Opinion on *Western Sahara*, [1975] I.C.J. 12, 65-66.

In the *Western Sahara* case, the Court was asked:

I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?

Nations' acquiescence in the "retrocession" to Morocco of the Spanish enclave of Ifni apparently stood as precedent for that claim. It seems that Ifni had been part of Morocco before being acquired by Spain. It was "restored" to Morocco following negotiations with Spain that were not seriously concerned with the democratically expressed will of the people of Ifni.<sup>88</sup>

In its sometimes puzzling opinion, the I.C.J. took a nuanced position with regard to decolonization and the "free and genuine expression of the will of the peoples concerned."<sup>89</sup> While acknowledging the importance of the peoples' will in any exercise of self-determination, the Court noted that, in "certain cases," the General Assembly had dispensed with the need for consultations. In such situations the General Assembly had decided that either the concerned population did not "constitute a 'people' entitled to self-determination" or that, given the special circumstances involved, a consultation was not necessary.<sup>90</sup> The Court then proceeded to establish that in the case of Western Sa-

If the answer to the first question is in the negative,

II. What were the legal ties between this Territory and the Kingdom of Morocco and the Mauritanian entity?

The first question was readily answered in the negative in view of the existence at the time of Spanish colonization of organized tribes in the area and the fact that Spain did not claim the territory by occupation. Rather Spain based its claim on treaties of protection with representatives of the inhabitants. When the Court turned its attention to the second question, Mauritania faced an additional hurdle in its effort to establish legal ties with the Western Sahara as it did not exist as a state in 1884, the time of the Spanish colonization of the Western Sahara.

88. *Id.* at 34. The General Assembly's consensus decision to take note of the settlement between Spain and Morocco of the Ifni matter hardly constitutes a strong endorsement of the propriety of the retrocession. It is, however, the only decision of the Assembly that the writer can find that comes close to an express endorsement of a settlement reached by the transfers of territory without some effort at consulting the population. The transfer of the French Establishments in India to India in the 1950s was never the subject of an Assembly resolution and was not discussed as a separate item. For the text of the transfer treaties, see Treaty of Cession of the Territory of the Free Town of Chandernagore, Feb. 2, 1951, France-India, 203 U.N.T.S. 155; Treaty Ceding the French Establishments in India, May 28, 1956, France-India, 1962 Recueil des Traités et Accords (France) no. 33. India's invasion of Goa and the other Portuguese territories on the Indian continent in December, 1960, *supra* note 83, was considered by the Security Council, but the Council could not agree to adopt any resolutions and the matter simply lapsed. In August, 1961, Dahomey seized the Portuguese enclave of Fort São João Baptista de Ajudá and ousted what seemed to have been a lone Portuguese official there. N.Y. Times, Aug. 2, 1961, at A13, col. 1. Portugal's objection to Dahomey's action was never the subject of a formal vote in the General Assembly supporting or criticizing it, but Dahomey appeared to have more support than Portugal in the discussion. See 16 U.N. GAOR, C.4 (1193d mtg.) 233-34, U.N. Doc. A/C.4/SR. 1193 (1961) (Dahomey claimed the enclave as "an integral part of Dahomey").

89. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 32.

90. *Id.* at 33. The Court did not enumerate the "certain cases" it had in mind. In context, Ifni was plainly one, although the General Assembly's consensus decision to "take note" of the retrocession, 24 U.N. GAOR, Supp. (No. 30) 75, U.N. Doc. A/7630 (1969), was hardly a strong endorsement of the resolution of that situation. The author has been unable to find any other instances where the General Assembly dispensed with a consultation.

hara, the General Assembly had recognized the right of the indigenous population “to determine their future political status by their own freely expressed will” and that this right would not be affected by any decision the Court might make as to the existence of pre-colonial ties of territorial sovereignty between Western Sahara and Morocco or Mauritania.<sup>91</sup> The Court concluded that the existence of such precolonial ties might affect the General Assembly’s decisions regarding modalities for the decolonization of Western Sahara in accordance with G.A. Res. 1514(XV).<sup>92</sup> But the Court indicated that the significance of such ties was exclusively dependent on the judgment of the General Assembly.<sup>93</sup> The Court then proceeded to examine the historical evidence and found that there were no ties of territorial sovereignty between Western Sahara and Morocco or “the Mauritanian entity” which “might affect the application of Resolution 1514(XV) in the decolonization” process.<sup>94</sup>

Thus, where, as with the case of East Timor, the General Assembly has confirmed the population’s right to a consultation,<sup>95</sup> the Court has indicated that historical claims should be treated with considerable skepticism and that the burden to show the contrary is upon propo-

91. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 36.

92. *Id.* at 36-37. “As to the future action of the General Assembly, various possibilities exist, for instance with regard to consultations between the interested States and the procedures and guarantees required for ensuring a free and genuine expression of the will of the people.” *Id.* at 37. The Court noted that the right of the Saharwi people to self-determination constituted “a basic assumption of the questions put to the Court.” *Id.* at 36.

93. *Id.* at 37.

94. As the Court noted:

[t]he materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514(XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.

*Id.* at 68.

95. Prior to the issuance of the Advisory Opinion, the General Assembly had confirmed the right of the Saharwi people to a referendum in nine resolutions: G.A. Res. 2072, 20 U.N. GAOR Supp. (No. 14) 59 U.N. Doc. A/6014; G.A. Res. 2229, 21 U.N. GAOR, Supp. (No. 16) 72, U.N. Doc. A/6316 (1966); G.A. Res. 2354, 22 U.N. GAOR, Supp. (No. 16) 53, U.N. Doc. A/6716 (1967); G.A. Res. 2428, 23 U.N. GAOR, Supp. (No. 18) 63, U.N. Doc. A/7218 (1968); G.A. Res. 2591, 24 U.N. GAOR, Supp. (No. 30) 73, U.N. Doc. A/7630 (1969); G.A. Res. 2711, 25 U.N. GAOR, Supp. (No. 28) 100, U.N. Doc. A/8028 (1970); G.A. Res. 2983, 27 U.N. GAOR, Supp. (No. 30) 84, U.N. Doc. A/8730 (1972); G.A. Res. 3162, 28 U.N. GAOR, Supp. (No. 30) 110, U.N. Doc. A/9030 (1973); G.A. Res. 3292, 29 U.N. GAOR, Supp. (No. 31) 103, U.N. Doc. A/9631 (1974).

nents of such claims.<sup>96</sup> The Court concluded that evidence short of establishing ties of territorial sovereignty was insufficient to support historical claims.<sup>97</sup>

In view of the Court's rejection in the *Western Sahara* opinion of proof stronger than that available to establish pre-colonial Indonesian ties of territorial sovereignty to East Timor,<sup>98</sup> any Indonesian attempt to assert historical ties to East Timor should fail. Given the General Assembly's declaration that the East Timorese people are entitled to a consultation, no colorable claim exists that the decolonization of East Timor, like that of Ifni and other "certain cases," should be treated in a special manner.<sup>99</sup>

In firmly rejecting the notion that reintegration solely on the basis of historical claims is consistent with the principle of self-determination, the *Western Sahara* opinion added to the strength and universality of the principle of self-determination. Regrettably, the aftermath of the *Western Sahara* opinion arguably weakened the principle. One day after the I.C.J. opinion was announced, King Hassan II of Morocco called for a peaceful invasion of Western Sahara to compel Spain to surrender the territory to the Moroccans.<sup>100</sup> When the Security Council failed to take decisive action, Spain entered into the "Madrid Agreement" ceding the territory to Morocco and Mauritania.<sup>101</sup>

In response to this flagrant violation of the principle of self-determination, the General Assembly reaffirmed the right of the Western Sahara population to self-determination, noted the Madrid Agreement, and called on the Secretary-General to arrange for a supervised consul-

96. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 41.

97. *Id.* at 68.

98. The claims of Morocco and Mauritania turned primarily on events which had occurred in the Nineteenth Century as to which there was at least some documentary evidence. The evidence for Timor's ties to Srivijaya as outlined by Indonesia in Nahar, *supra* note 51, depends upon the accounts of travellers. *Id.* at 1-2. The evidence in respect of Majapahit primarily depends upon the work of the poet Prapanca. *Id.* at 2-3. Reliance on the latter is similar to reliance on William Shakespeare for an accurate history of Denmark.

99. Moreover, even Indonesia consistently has recognized that the inhabitants of East Timor constitute a "people" for purposes of self-determination, as evidenced by its reliance on illusory acts of self-determination to defend its invasion and aftermath. *See* text accompanying notes 55-58 *supra*.

100. Letter dated October 18, 1975, from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 17, U.N. Doc. S/11852 (1975).

101. The agreement resulted from secret negotiations between Morocco, Mauritania, and Spain, conducted in Madrid. The existence of the secret negotiations was disclosed in a joint communique issued on November 14, 1975. The agreement provided for the partitioning of Western Sahara between Morocco and Mauritania and permitted Spain to retain a 35 percent interest in a Saharan phosphate company valued at \$700 million. The agreement also provided for establishing an interim regime that a Spanish governor would administer with the assistance of Moroccan and Mauritanian deputy governors. Franck & Hoffman, *supra* note 1, at 341.

tation to ascertain the wishes of the population.<sup>102</sup> The Moroccans staged an “act of free choice” in February, 1976 but the United Nations has never approved it.<sup>103</sup> As a result, the people of Western Sahara still possess their unexercised right to self-determination.

The failure of the United Nations to take unambiguous and effective action against Morocco struck a severe blow to the vitality of self-determination as a legal principle.<sup>104</sup> Both the Moroccan invasion and the Madrid Agreement flagrantly violated self-determination and, the General Assembly ought unequivocally to have denounced them. In the interest of preserving self-determination as more than an empty aspiration to those peoples to whom the right has attached, the General Assembly’s subsequent “notice” of the agreement should be considered an aberration without precedential value. If the General Assembly’s “notice” of the Madrid Agreement does carry some precedential weight, it lies in the General Assembly’s simultaneous affirmation of the right of the people of the Western Sahara to be consulted on their future status. Consistently with this position, the General Assembly directed the interim government to permit a consultation. One should thus interpret Resolution 3458(XXX) as recognizing the legitimacy of an interim regime in Western Sahara established and administered by Spain along with two neighboring states. It should, moreover, be read to require the termination of that regime upon the exercise of the peoples’ right to self-determination. In view of the aftermath of the *Western Sahara* opinion, Indonesia’s sole plausible claim to East Timor is as a participant in an interim regime jointly administered with Portugal

102. G.A. Res. 3458A, 30 U.N. GAOR, Supp. (No. 34) 116-17, U.N. Doc. A/10034 (1975). The first part of the resolution reaffirmed of the right of the Saharwi people to self-determination in accordance with G.A. Res. 1514(XV), *supra* note 52, and took note “with appreciation” of the Court’s Advisory Opinion. The second part mentioned both G.A. Res. 1514(XV), *supra* note 52, and G.A. Res. 1541(XV), *supra* note 5, in its preamble. (G.A. Res. 1541(XV), unlike G.A. Res. 1514(XV), refers to the possibility of integration with an independent state). It then proceeded to take note of the tripartite agreement and piously to “request the parties to the tripartite agreement to ensure respect for the freely expressed aspirations of the Saharan population.” G.A. Res. 3458B, 30 U.N. GAOR, Supp. (No. 34) 117, U.N. Doc. A/10034 (1975). For additional discussion of these resolutions, see Franck & Hoffman, *supra* note 1, at 340-42. For a time, it appeared that the basic principles of the Court’s Opinion had been submerged in an expedient acquiescence by the United Nations in the Moroccan and Mauritanian actions. Because, however, the Frente POLISARIO has had significant success in its military struggle against Morocco and Mauritania (which was forced to withdraw from the part of Western Sahara that it had claimed), General Assembly resolutions are demonstrating more support for the principles involved. See G.A. Res. 35/19, 35 U.N. GAOR (56th plen. mtg.) 1-3, U.N. Doc. A/RES/35/19 (prov. ed. 1980) (General Assembly reaffirmation of the right of the Saharwi people to independence and declaration of its deep concern about the continued “occupation” of the Territory by Morocco).

103. U.N. Dept. of Political Affairs, Trusteeship and Decolonization, *The Question of Western Sahara at the United Nations*, DECOLONIZATION, Oct., 1980, at 51-52 [hereinafter cited as *The Question of Western Sahara*].

104. *Id.* at 53-60.

and approved by the General Assembly. Given Portugal's failure to accept Indonesia's occupation of East Timor and the General Assembly's call for the withdrawal of Indonesian troops, the Moroccan occupation of Western Sahara is weak support for Indonesia's presence in East Timor.<sup>105</sup>

## 2. *Paragraph Six of G.A. Resolution 1514(XV)*

Reintegration of decolonized territories without prior consultation has been justified as within the contemplation of paragraph six of General Assembly Resolution 1514(XV). Paragraph six provides:

Any attempt aimed at the partial disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principles of the Charter of the United Nations.<sup>106</sup>

The language of paragraph six is opaque and reflects the draftsmen's confusion about its intended effect.

One reading arguably supports integration without consulting the indigenous population where the sovereign nation has a well-established historical claim to the territory. This interpretation relies on a few statements by delegates who participated in drafting paragraph six and denounced the disruption of territories caused by colonial occupation, thereby suggesting that paragraph six was intended to preserve the integrity of pre-colonial nations and empires.<sup>107</sup>

One proponent of this interpretation appears to have been Indonesia. At one point, Indonesia persuaded the Guatemalan representative to withdraw a proposed amendment to paragraph six.<sup>108</sup> The Guatemalan amendment states that "[t]he principle of the self-determination of peoples may in no case impair the right of territorial integrity of any State or its right to the recovery of territory."<sup>109</sup> The Indonesian repre-

105. The case of East Timor can be distinguished further from the circumstances surrounding that of Western Sahara in at least two ways. First, in contrast to its failure to condemn unequivocally the Moroccan invasion, the General Assembly adopted a resolution within five days of the Indonesian bombardment of East Timor's major city, Dili, that strongly deplored "the military intervention of the armed forces of Indonesia in Portuguese Timor." G.A. Res. 3485, 30 U.N. GAOR, Supp. (No. 34) 18, U.N. Doc. A/10034 (1975). The resolution also called upon Indonesia to withdraw its forces without delay and affirmed the "inalienable right" of the East Timorese to self-determination. Secondly, unlike Spain, Portugal has not condoned acts of aggression against its former colony. *See* note 101 *supra*. On the contrary, the Security Council was convened to consider the situation in East Timor at Portugal's request, and the Portuguese consistently have condemned Indonesia's actions. *See, e.g.*, 30 U.N. SCOR, (1864th mtg.) 27, U.N. Doc. S/PV. 1864 (1975) (statement of Mr. Galvao Teles).

106. G.A. Res. 1514(XV), *supra* note 52.

107. *See* notes 110-15 *infra*.

108. 15 U.N. GAOR, (947th plen. mtg.) 1271, U.N. Doc. A/PV. 947 (1960).

109. 15 U.N. GAOR, Annexes (Agenda Item No. 87) 7, U.N. Doc. A/L. 325 (1960).



sentative, however, argued that paragraph six as written already protected the claims of nations to their pre-colonial territory.

When drafting this document my delegation was one of the sponsors of paragraph 6, and in bringing it into the draft resolution we had in mind that the continuation of Dutch colonialism in West Irian is a partial disruption of the national unity and the territorial integrity of our country.<sup>110</sup>

Unfortunately, perhaps, the Guatemalan amendment was withdrawn without a vote.<sup>111</sup> Its rejection or acceptance could have contributed significantly to determining whether the Indonesian interpretation of paragraph six was correct.

Other delegates made statements that seemed to support the Indonesian interpretation. Jordan, for example, argued that “[t]he usurpation of a part of the Arab territory of Palestine by the joint aggression of colonialism and zionism” was a prime example of a situation within the reach of paragraph six.<sup>112</sup> The Moroccan representative explained that his country supported paragraph six on the assumption that it covered, *inter alia*, “the regrettable dismemberment and occupation of Palestine . . . by this new phenomenon of foreign colonialism known as international Zionism,” and the “silent tactics of the viper—of French colonialism to partition Morocco and disrupt its national territorial unity, by setting up an artificial state in the area of Southern Morocco which the colonialists call Mauritania.”<sup>113</sup> This interpretation has been infrequently though forcefully invoked to justify an historical claim to a neighboring territory.<sup>114</sup> In at least two instances the General Assembly has countenanced such claims.<sup>115</sup>

A right to reintegrate pre-colonial territory, however, is not the most favored construction of paragraph six. Rather, states have more often

Guatemala may have been jockeying for position in its dispute with Great Britain over British Honduras (Belize).

110. 15 U.N. GAOR, (947th plen. mtg.) 1271, U.N.Doc. A/PV. 947 (1960). In view of its usual argument for sovereignty over West Irian, based on the theory that it succeeded to all the territory of the former Dutch East Indies, *see* note 18 *supra*, Indonesia, paradoxically, did not need to espouse the broader Guatemalan position. The narrower interpretation of paragraph six, *see* notes 119-20 *infra*, was sufficient to make its case. (The Dutch of course disputed the point on the merits and argued that West Irian had been administered separately from the remainder of the Dutch East Indies and that its peoples were ethnically distinct.)

111. 15 U.N. GAOR, (947th plen. mtg.) 1271, U.N. Doc. A/PV.947 (1960).

112. 15 U.N. GAOR, (946th plen. mtg.) 1265, 1268, U.N. Doc. A/PV. 946 (1960). The treatment of Hai may be a third example. *See The Question of Western Sahara, supra* note 103, at 7.

113. 15 U.N. GAOR, (947th plen. mtg.) 1271, 1284, U.N. Doc. A/PV. 947 (1960).

114. *See* notes 84 & 111 *supra*.

115. *See* Franck & Hoffman, *supra* note 1, at 371-79 (Gibraltar) and 379-84 (Falkland Islands).

invoked paragraph six in order to deny one faction of the population of a non-self-governing territory the right to succession.<sup>116</sup> It is this use of paragraph six that most states contemplated when they approved the Resolution.

[M]ost states voting for Resolution 1514's paragraph 6 probably did so in the belief that they were creating a sort of grandfather clause: setting out the right of self-determination for all colonies but not extending it to parts of decolonized states and seeking to ensure that the act of self-determination occurs within the established boundaries of colonies, rather than within sub-regions. The U.N. debates and their juxtaposition with events in the former Belgian Congo make clear that the desire to prevent self-determination from becoming a justification for Katanga-type secessions was uppermost in the minds of most delegates.<sup>117</sup>

More specifically, the underlying purpose was to prevent a part of the non-self-governing territory, in particular the wealthiest part, from negotiating a separate agreement with the former colonial power. There were also fears that the wealthier part might become, apart from the remainder of the territory, an associate state of that power. The dele-

116. As the Trust Territory of New Guinea approached independence in union with the Australian territory of Papua, centrifugal forces began to manifest themselves. This was particularly the case in the island of Bougainville, which is some distance from the New Guinea mainland and is geographically part of the Solomon Islands. The General Assembly "[s]trongly endorse[d] the policies of the administering Power and the Government of Papua New Guinea aimed at discouraging separatist movements and at promoting national unity." G.A. Res. 3109, 28 U.N. GAOR, Supp. (No. 30) 91-92, U.N. Doc. A/9030 (1973). From 1979, the General Assembly has been considering the claim of Madagascar to the islands of Glorieuses, Juan de Nova, Europa and Bassas de India, which were governed by the French as part of the Madagascar colonial territory but did not become a part of Madagascar when it became independent in 1960. The Representative of Algeria made the point clearly in the Special Committee.

Thus even if the islands had not belonged to Madagascar before the French colonization, they would have so belonged by virtue of their attachment to Madagascar under the French occupation. Under the law of secession of states, when a colonial Power withdrew from its possessions it handed over the territories in question within the same boundaries which they had during the colonial period. Whenever a colonial Power had tried to hand over only part of a territory, disputes had arisen which had been resolved only by ensuring that the entire territory was handed over. Failure to do so violated the principle that the frontiers of the new State could be defined by reference to its frontiers under colonial domination.

34 U.N. GAOR, Special Political Committee (38th mtg.) 6, U.N. Doc. A/SPC/34/SR. 38 (1979).

The General Assembly has referred specifically to the preservation of national unity and territorial integrity in supporting the Madagascar claim. G.A. Res. 34/91, 34 U.N. GAOR, Supp. (No. 46) 82, U.N. Doc. A/34/46 (1979). The Assembly has similarly invoked the language of paragraph six of G. A. Res. 1514(XV), *supra* note 52, in support of the claim of the Comoro Republic to the island of Mayotte over which the French retained control at the time of Comorian independence. G.A. Res. 35/43, Resolution and Decisions Adopted by the General Assembly During the First Part of its Thirty-Fifth Session 12, U.N. Doc. GA/6375 (1980). The Madagascar and Comoro instances appear to be exactly the type of case that the spokesman for Cyprus had in mind, *see* note 118 *infra*.

117. Franck & Hoffman, *supra* note 1, at 370.

gate of Cyprus expressed these concerns during the deliberations over paragraph six, calling it “essential in order to counter the consequences of the policy of ‘divide and rule’, which often is the sad legacy of colonialism and carries its evil effects further into the future.”<sup>118</sup> Consistent with these statements of purpose is the fact that in subsequent usage within the United Nations, paragraph six has been invoked primarily to support denying a right of secession to parts of a territory at or subsequent to independence.<sup>119</sup> Thus, any attempt on the part of the Indonesians to invoke paragraph six in their defense is to resort to a less accepted and little used construction of that provision.

Assuming that paragraph six supports reintegration without prior consultation with the indigenous population, Indonesia still has no grounds for invoking it in its defense. First, as discussed in connection with the *Western Sahara* opinion, Indonesia’s historical claim to East Timor is spurious at best.<sup>120</sup> There is no convincing proof that East Timor ever formed an integral part of the pre-colonial Indonesian empire. Indeed, the ethnic and cultural roots of the East Timorese and the Indonesians suggest the contrary.<sup>121</sup> Secondly, also noted above, any attempt by Indonesia to defend its invasion on such grounds conflicts with its own declaration that it had no intent to claim East Timor as an integral part of its colonial or pre-colonial legacy.<sup>122</sup>

Any such claims that Indonesia has a right to “reintegrate” East Timor because of historic, ethnic, and cultural ties, have no factual or legal basis. Factually, it is unlikely that such ties exist. If they did, they would not render legal the action in which Indonesia engaged. Neither the *Western Sahara* opinion and its aftermath nor paragraph six of Resolution 1514 credibly support Indonesia’s claims.

### 3. East Timorese “Economic Nonviability”

In statements by Foreign Minister Adam Malik in December, 1974, the Indonesian government alluded to a possible third defense of its invasion and occupation of East Timor. Malik contended that independence was “not [a] realistic” hope for East Timor in view of “the backwardness and economic weakness of the population.”<sup>123</sup> As a result, only two alternatives were available to the East Timorese: (1) continued Portuguese rule, or (2) integration with Indonesia.

118. 15 U.N. GAOR, (945th plen. mtg.) 1247, 1255, U.N. Doc. A/PV. 945 (1960).

119. See note 116 *supra*.

120. See note 80 *supra*.

121. See note 81 *supra*.

122. See note 82 *supra*.

123. *Issue on East Timor*, *supra* note 4, at 14.

Resolution 1514(XV) rebuts any suggestion that a lack of economic viability is grounds for delaying independence to a non-self-governing territory. Paragraph two refers to self-determination as a right of "[a]ll peoples."<sup>124</sup> Paragraph three specifically provides that "[i]nadequacy of political, economic, social and educational preparedness should never serve as a pretext for delaying independence."<sup>125</sup>

Aside from its legal defects, the argument that East Timor's economic deficiencies provide a basis for denying it independence has little basis in fact. Admittedly, under Portuguese administration, the East Timorese economy was stagnant and primarily agrarian<sup>126</sup> and Portuguese contributions were needed to make up trade deficits.<sup>127</sup> It should be noted, however, that a 1975 United Nations report describes the area as having fertile lands, valuable forests, and probably "deposits of copper, gold, manganese and petroleum."<sup>128</sup> Clearly, there has been little, if any, capital development—but widespread starvation became a problem only after the Indonesian invasion.<sup>129</sup> There is every reason to believe that East Timor possesses the natural resources with which to build a viable economy. East Timor's economic potential is underscored by the intense interest in the area shown by Australian and American oil interests.<sup>130</sup> Thus, neither on the facts nor the law, was East Timor's economic condition a serious impediment to its independence.<sup>131</sup>

### III. Armed Aggression against East Timor

Besides denying self-determination to East Timor by "reintegrating" it, Indonesia also violated international law by its earlier invasion of

124. G.A. Res. 1514(XV), *supra* note 52, at para. 2.

125. *Id.* at para. 3.

126. Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 24 U.N. GAOR, 2 Supp. (No. 23) 259-61, U.N. Doc. A/7623/Rev.1 (1969) [hereinafter cited as Report of the Special Committee on Decolonization (1969)].

127. *Id.* at 261.

128. Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 30 U.N. GAOR, 2 Supp. (No. 23) 38, U.N. Doc. A/10023/Rev. 1 (1975).

129. Kamm, *supra* note 1, at 58.

130. J. JOLLIFFE, *supra* note 1, at 99-100, 295.

131. Should it be suggested that East Timor has inadequate human resources to qualify for independence, it should be noted that in 1975, the population of East Timor was estimated at between 650,000 and 670,000. Report of the Secretary-General, *supra* note 35, at para. 7. On that basis, the population of East Timor was larger than that of at least nineteen U.N. members. See [1975] U.N. Demographic Y.B. 160-64. East Timor could hardly be regarded as a mini-state. Nevertheless, it should be noted that any discussion in the United Nations about the danger of a world including numerous mini-states had ended long before 1975. See Gunter, *What Happened to the United Nations Ministate Problem?*, 71 AM. J. INT'L L. 110 (1977).

East Timor. As provided in Article 1 of the Charter, one of the purposes of the United Nations is “[t]o maintain international peace and security, and to that end: to take effective collective measures . . . for the suppression of acts of aggression or other breaches of the peace.”<sup>132</sup> Article 2 of the Charter establishes “Principles” defining Members’ re-

132. U.N. CHARTER art. 1, para. 1. The authority to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” is lodged in the Security Council. U.N. CHARTER art. 39. The General Assembly devoted years of prodigious energy to the attempt to define aggression. Its final product, the “Definition of Aggression,” contained in G.A. Res. 3314, 29 U.N. GAOR, 1 Supp. (No. 31) 142, U.N. Doc. A/9631 (1974), contains numerous ambiguities and circularities—but the core of the Definition clearly applies to Indonesia’s actions:

*Article 1*

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

*Explanatory note:* In this Definition the term “State”:

- (a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;
- (b) Includes the concept of a “group of States” where appropriate.

*Article 2*

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

*Article 3*

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof. . . .

*Id.* at 142-43.

For a discussion of the defining process, see B. FERENCZ, *DEFINING INTERNATIONAL AGGRESSION* (1975); J. STONE, *CONFLICT THROUGH CONSENSUS* (1977). The Definition, which was adopted by consensus in the General Assembly, is arguably either an authoritative interpretation of the Charter or a codification of customary law. At the very least, Indonesia appears to have contravened art. 3, para. (a) of the Definition. Professor Stone discusses the application of the Definition of Aggression to East Timor in light of the *Explanatory note* to Article 1 of the Definition. The whole of his unilluminating discussion is:

As already noticed, the oracular caveat in Explanatory Note (a) to Article 1 of the Consensus Definition that its use of the term “State” is “without prejudice to questions of recognition” or of Membership of the United Nations, brought little light to such matters. The Indonesian military activity in East Timor early in 1976, which culminated in its virtual annexation, was not in *direct* conflict with any other pre-existing State. It is difficult to see how Explanatory Note (a) helps *the application of this Definition* as between Indonesia and the Fretilin forces struggling for independence. This is because it remains most obscure and debatable, even with Explanatory Note (a), whether and in what sense that Definition is limited to State-to-State aggression. And, of course, it was arguable that (as with Angola) East Timor still lacked at the time of the military intervention concerned the stable government necessary for statehood.

*Id.* at 131 (emphasis in original).

sponsibility that are intended to implement the purposes of the Charter.<sup>133</sup> Article 2(4) provides:

All Members shall refrain in their international relations from the threat or *use of force against the territorial integrity or political independence of any state*, or in any other manner inconsistent with the Purposes of the United Nations.<sup>134</sup>

No one disputes that Indonesia used force against East Timor.<sup>135</sup> Moreover, it is clear that Indonesia's use of force was against another territorial entity,<sup>136</sup> and therefore not a matter within Indonesia's domestic jurisdiction.<sup>137</sup>

Nevertheless, it might be argued that East Timor was not a "state" at the time of the Indonesian invasion and hence the provision of Article

133. U.N. CHARTER art. 2.

134. U.N. CHARTER art. 2, para. 4 (emphasis added).

135. Portugal notified the Security Council of the Indonesian invasion on December 7, 1975. 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 66, U.N. Doc. S/11899 (1975). On December 25, the international press reported a second Indonesian attack on East Timor. This report was confirmed by Portugal. *Issue on East Timor*, *supra* note 4, at 31. The General Assembly and the Security Council recognized and deplored Indonesia's primary role in the invasion. G.A. Res. 3485, 30 U.N. GAOR, Supp. (No. 34) 118, U.N. Doc. A/10034 (1975); S.C. Res. 384 (1975), *supra* note 33. *See generally* Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, 20 U.N. GAOR, Supp. (No. 14), 11 U.N. Doc. A/6014 (1965); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, U.N. Doc. A/8028 (1970); 30 U.N. SCOR (1864th mtg.) 21, 28, U.N. Doc. S/PV. 1864 (1975) (remarks of Portuguese representative); 31 U.N. SCOR (1914th mtg.) 26, U.N. Doc. S/PV. 1914 (1976) (remarks of Benin representative); 30 U.N. SCOR (1865th mtg.) 6, U.N. Doc. S/PV. 1865 (1975) (remarks of Chinese representative). The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, *supra*, was invoked against Indonesia by the Representative of Guyana, 30 U.N. SCOR (1869th mtg.) 13, U.N. Doc. S/PV. 1869 (1975); 31 U.N. SCOR (1913th mtg.) 3, U.N. Doc. S/PV. 1913 (1976). The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, *supra*, was applied to Indonesia by the Representative of Rumania, 31 U.N. SCOR (1914th mtg.) 31, U.N. Doc. S/PV. 1914 (1976).

136. First, Indonesia had not yet itself declared the "reintegration" of East Timor into the Indonesian Republic when it launched its armed attacks. *See* text accompanying notes 31-44 *supra*. Second, the very defenses raised by Indonesia to justify its use of force presuppose that the invaded territory is not within the sovereign power of the aggressor. *See* text accompanying notes 144-83 *infra*.

137. The United Nations Charter provides that:

[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

U.N. CHARTER art. 2, para. 7. Furthermore, some jurists maintain that decolonization issues are of international cognizance in the first instance and therefore not within the domestic jurisdiction of any state. R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 103 (1963).

2(4) protecting the “territorial integrity” and “political independence” of a “state” is not applicable.<sup>138</sup> Such a narrow construction of the

138. This (weak) argument was espoused by the Representative of New Zealand in explanation of his abstaining vote on the General Assembly resolution adopted immediately after the Indonesian invasion. 30 U.N. GAOR, C.4 (2189th mtg.) 413, U.N. Doc. A/C.4/SR. 2189 (1975). The Netherlands had made a similar argument in respect of Indonesia in the 1940s. It was probably a stronger argument as between the Netherlands and its erstwhile colony, to which a case based on noninterference in internal affairs might be made, than it was as between Indonesia and a colony under the administration of another state. Nevertheless, the Netherlands' argument was side-stepped by the United Nations. *See* A. TAYLOR, *INDONESIAN INDEPENDENCE AND THE UNITED NATIONS* 355-56, 371-73 (1960). In spite of the relatively few grants of recognition that East Timor had received on the eve of the Indonesian invasion, a persuasive case can be made that it was in fact a state, with FRETILIN its government. The better view of recognition is that it is merely declaratory and its absence does not preclude the existence of a state or government as the case may be, if the relevant objective characteristics are met. *See* I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 91-93 (3d ed. 1979). The characteristics of statehood are usually said to be (a) a permanent population, (b) a defined territory, (c) a government, and (d) capacity to enter into relations with other states. *Id.* at 74. East Timor on December 7, 1975, with FRETILIN in effective control (control generally being the test for a government) apparently met those criteria. It should also be noted that in current state practice, formal recognition or non-recognition is less important than might once have been the case. *See generally* RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES 11-15 (Tent. Draft No. 2, 1981).

Events subsequent to the Indonesian invasion, however, tend to suggest that the Democratic Republic of East Timor never achieved the status of a state. FRETILIN representatives, supported in their efforts by a letter from the Representative of Guinea-Bissau to the President of the Security Council, *reprinted in* 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 66, U.N. Doc. S/11911 (1975), arrived in New York on December 11, 1975 to supply the Security Council with information regarding the invasion. The Representative of Guinea-Bissau invoked Rule 39 of the Provisional Rules of Procedure of the Security Council as the basis of its request. This Rule states, “The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence.” Provisional Rules of Procedure of the Security Council, U.N. Doc. S/96/Rev.6 (1974). The fact that Guinea-Bissau found it necessary to invoke Rule 39 underscored the tenuous diplomatic position of the Democratic Republic of East Timor. From the point of view of FRETILIN and those states that had recognized it as a government, *see* note 29 *supra*, the Democratic Republic of East Timor should have been permitted to participate pursuant to U.N. Charter, which provides, in relevant part, that:

[a]ny Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

U.N. CHARTER art. 32. In other colonial situations prior to the East Timor imbroglio, nascent states had successfully invoked Article 32. Indonesia, in its dispute with the Netherlands, had enough diplomatic clout to have itself treated as a non-Member state within the meaning of Article 32. *See* A. TAYLOR, *supra*, at 368. (Note the success of the Palestine Liberation Organization in having itself treated by the Security Council as if it were a *member* state. *See* F. KIRGIS, *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 112-18 (1977).) In short, the Guinea-Bissau letter probably reflected the reality that, since Portugal had not recognized the Democratic Republic of East Timor, and the United States, Britain and France (and perhaps the U.S.S.R.) were not eager to offend Indonesia more than

term "state,"<sup>139</sup> however, unduly restricts the effectiveness of 2(4). Regardless of what "state" might mean elsewhere in the Charter,<sup>140</sup> for the purposes of Article 2(4), it should be interpreted in order to serve the broad objectives of the Charter<sup>141</sup> and, in particular, the first purpose listed in Article 1: "to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace."<sup>142</sup> The very fact that the term "state" was chosen rather than the more narrow terms "member" or "nation" itself suggests that a broader and more comprehensive interpretation was intended. To this end, the term "state," as used in Article 2(4), should be considered to include all territorial entities, including East Timor.

Even if East Timor were not a state, Indonesia's invasion violated Articles 1 and 2 of the Charter. Article 1 prohibits *all "acts of aggression or other breaches of the peace,"* and Article 2 prohibits "the threat or use of force . . . in *any . . . manner inconsistent with the Purposes of the United Nations.*" Those Purposes include "develop[ing] friendly relations among nations based on *respect for the principle of equal rights and self-determination of peoples. . . .*"<sup>143</sup> Neither of these provisions is restricted in its applicability to states. Thus, the Indonesian invasion—an act of aggression, a breach of the peace, and a violation of the principle of self-determination—violated the U.N. Charter.

Indonesia has attempted to justify its use of force against East Timor on four grounds: (1) self-defense, (2) invitation by the East Timorese, (3) future stability of Indonesia and Southeast Asia, and (4) humanitarian purposes. Although international law recognizes the legitimacy of armed intervention into another territory under certain circum-

was absolutely necessary, the votes were simply not there to treat FRETILIN as the government of a state.

139. The General Assembly has declared that for purposes of defining aggression, the term "State," "(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations; (b) Includes the concept of a 'group of States' where appropriate." G.A. Res. 3314, 29 U.N. GAOR, Supp. (No. 31) 142, U.N. Doc. A/9631 (1974).

140. See note 141 *infra*.

141. The term "state" has been broadly interpreted elsewhere in the Charter. For the purposes of defining membership pursuant to U.N. Charter Article 3, the term "state" was considered sufficiently broad to include the Ukrainian S.S.R. and the Byelorussian S.S.R. as well as the Philippines and India, the latter two being colonies at the time their membership in the U.N. was recognized. In its dispute with the Netherlands, Indonesia was treated as a "state which is not a member of the United Nations" for purposes of Charter Article 32. See note 138 *supra*.

142. U.N. CHARTER art. 1, para. 1.

143. U.N. CHARTER art. 1, para. 2. (Author's emphasis).



stances,<sup>144</sup> Indonesia has not shown that its invasion falls within any of the recognized exceptions.

A. “*Self-Defense*”

Indonesia has attempted to justify its invasion of East Timor as an exercise of its inherent right to self-defense: “incursions by armed bands into Indonesian territory had made it necessary for Indonesia to take appropriate action to prevent territorial violations and the harassment of its people.”<sup>145</sup> The use of force in self-defense is recognized by Article 51 of the U.N. Charter as a justifiable interim response to armed attack until such time as the Security Council undertakes action “to maintain international peace and security.”<sup>146</sup> The U.N. Charter doctrine of self-defense contemplates that the use of such force will be proportional to the precipitating attacks,<sup>147</sup> and requires the defending state to notify the Security Council of its actions.<sup>148</sup>

In view of the lack of evidence that East Timorese troops ever launched unprovoked attacks into Indonesian territory,<sup>149</sup> Indonesia’s invocation of self-defense is suspect. Any fighting involving Indonesia probably resulted from Indonesian aid—including troops and air and naval craft—to UDT and APODETI forces using Indonesian Timor as a sanctuary from which to attack East Timor.<sup>150</sup> Moreover, even if East Timor did launch unprovoked border incursions into Indonesia, Indonesia’s invasion failed to satisfy the standards of Article 51. Indonesia’s armed attack was grossly disproportionate to whatever border incursions East Timor might have initiated<sup>151</sup> and Jakarta did not notify the Security Council of its actions.<sup>152</sup>

144. See text accompanying notes 145-83 *infra*.

145. 30 U.N. GAOR, C.4 (2180th mtg.) 356, 358, U.N. Doc. A/C.4/30/SR. 2180 (1975). A similar statement was made in the Security Council, 30 U.N. SCOR (184th mtg.) 37, U.N. Doc. S/PV. 1864 (1975).

146. U.N. CHARTER art. 51.

147. I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 261-64 (1963).

148. U.N. CHARTER art. 51.

149. Indonesia claimed that FRETILIN shelled towns within Indonesian Timor. *Issue on East Timor*, *supra* note 4, at 27.

150. This allegation by FRETILIN was later confirmed by Australian observers who visited East Timor during the few months prior to the Indonesian invasion and appears to have been accepted as accurate by the foreign news media. *Issue on East Timor*, *supra* note 4, at 26-27.

151. Logic would seem to indicate that a proportional response to border incursions would involve nothing more than action taken to secure the border. Such action certainly would not include a full-scale invasion.

152. Indonesia’s only act of “notification” to the Security Council came in response to the resolutions adopted by the General Assembly and the Security Council. *Issue on East Timor*, *supra* note 4, at 59.

## B. "Invitation" of the East Timorese

Indonesia has also argued that its troops were sent to East Timor in response to a request "issued on 30 November 1975 by the four political parties . . . representing the large majority of the population of Portuguese Timor."<sup>153</sup> That is, Indonesia has claimed that its presence in East Timor was requested by the people, and intended solely to assist them in establishing conditions for the peaceful and orderly exercise of their right to self-determination.

International law traditionally has recognized the privilege of states to give military assistance, when requested, to governments of other states that are engaged themselves in acts of self-defense.<sup>154</sup> Because such action is characterized as a component of the self-defense doctrine,<sup>155</sup> it is considered to fall within the express recognition of Article 51 of the Charter. The right to assist other states is not, however, unlimited. In order that the assistance not violate a second state's "territorial integrity or political independence,"<sup>156</sup> the intervening states must be invited by *the recognized government* of the second state.<sup>157</sup>

Here, the "invitation" was defective because it did not emanate from a recognized state government.<sup>158</sup> In the same debate in which the In-

153. 30 U.N. GAOR, C.4 (2187th mtg.) 403, 404, U.N. Doc. A/C.4/30/SR. 2187 (1975) (statement by representative of Indonesia).

154. See D. BOWETT, SELF DEFENCE IN INTERNATIONAL LAW 200, 205-15 (1958) (collective right of self-defense has long been accepted); I. BROWNLIE, *supra* note 147, at 321-22, 327, 328-33 (right to assist states has remained part of state practice under U.N. Charter); Garner, *Questions of International Law in the Spanish Civil War*, 31 AM. J. INT'L L. 66, 67-68 (1937) (it is legal to aid "legitimate governments" but illegal to aid insurgents until they become recognized belligerents); Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 205, 245 (1969) ("The traditional rule is said to be that it is lawful to assist a widely recognized government at its request at least until belligerency is attained.") *But see* Farer, *Harnessing Rogue Elephants: A Short Discourse on Foreign Intervention in Civil Strife*, 82 HARV. L. REV. 511, 532 (1969) (traditional rule has been eroded to the point where it has lost its normative capacity and should be replaced by "a rule that would legitimate assistance short of tactical military support, either to incumbents or rebels, but would proscribe absolutely the commitment of combat troops or battlefield advisers (or 'volunteers') no matter how few or how negligible their effect"). This rule clearly would proscribe the Indonesian action.

155. States that intervene on behalf of, and at the request of a second state are said to be engaging in an exercise of the inherent right of collective self-defense, a right expressly recognized in the U.N. Charter. U.N. CHARTER art. 51. See I. BROWNLIE, *supra* note 147, at 329 ("The express recognition of a right of collective self-defence in Article 51 of the United Nations Charter gave the right a precise legal status which it perhaps lacked previously." (Footnote omitted)).

156. U.N. CHARTER art. 2, para. 4.

157. See Garner, *supra* note 154, at 67-68; I. BROWNLIE, *supra* note 147, at 327 ("Aid may be given to the government on the basis of the right assumed to exist in customary law of aiding a legitimate government." (Footnote omitted)).

158. The "invitation" emanated from four political parties that, it was claimed, represented the large majority of the population of East Timor. 30 U.N. GAOR, C.4 (2187th

donesian representative to the Fourth Committee characterized the joint resolution of the four political parties as an invitation, he acknowledged both that no faction could authoritatively claim to represent the people of East Timor,<sup>159</sup> and that Portugal remained the responsible, albeit criminally negligent, administering power.<sup>160</sup> Given Indonesia's failure to recognize the four parties or any one of them as the legitimate government of East Timor,<sup>161</sup> and the undisputed fact that Indonesian intervention was not requested by Portugal,<sup>162</sup> an attempt by Indonesia to legitimate its forceful intervention as a response to a request must fail.<sup>163</sup>

### C. *Long-Term Regional "Security"*

Indonesia has also attempted to defend its actions on the grounds that they were necessary to maintain the long-term stability of Indonesia and Southeast Asia.<sup>164</sup> The fear that the East Timor conflict would pose a threat to regional stability was apparently rooted in the proposition that FRETILIN was a Communist-controlled organization.<sup>165</sup> There is, however, evidence to the contrary.<sup>166</sup> Nevertheless, even if the proposition were true, the doctrine of self-defense does not recognize a state's right to launch an armed attack as a "prophylactic" measure to thwart future threats posed by a neighboring state or territory. And even if a preemptive strike is sometimes lawful, a debatable proposition, the threatened danger must be imminent.<sup>167</sup> FRETILIN posed

mtg.) 403, 404, U.N. Doc. A/C.4/30/SR. 2187 (1975). These organizations could hardly be considered a recognized state government in view of the fact their invitation was issued two days after the unilateral declaration of independence by FRETILIN, *Issue on East Timor*, *supra* note 4, at 28, who at the time administered East Timor and enjoyed the overwhelming support of the population. *Id.* at 23.

159. 30 U.N. GAOR, C.4 (2187th mtg.) 403, U.N. Doc. A/C.4/30/SR. 2187 (1975).

160. *Id.*

161. No evidence of Indonesia having granted recognition to these four parties, or any one of them, as the legitimate government of East Timor appears in the public record.

162. Portugal termed Indonesia's intervention "an act of aggression," severed diplomatic relations with Indonesia, and called for an urgent meeting of the Security Council, 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 53, U.N. Doc. S/11899 (1975), hardly the response of a state that had requested Indonesia's intervention.

163. Because the Indonesian argument fails to make out a colorable claim for the legitimate governing status of the four parties who issued the joint declaration of November 30, 1975, other rules associated with the law of collective self-defense need not be considered. *See generally* I. BROWNLIE, *supra* note 147, at 261-65, 269-75, 328-31; R. HIGGINS, *supra* note 137, at 197-210; D. BOWETT, *supra* note 154, at 184-99.

164. DOCUMENTS, *supra* note 22, at 203-07.

165. *See Issue on East Timor*, *supra* note 4, at 15-16, 25; DOCUMENTS, *supra* note 22, at 204.

166. *Issue on East Timor*, *supra* note 4, at 10.

167. The so-called right of anticipatory self-defense is generally assumed to be permitted by customary law in the face of imminent danger. I. BROWNLIE, *supra* note 147, at 257. Yet

no such threat.<sup>168</sup> Finally, even if international law did allow such attacks in certain situations, the Indonesian invasion was still illegal because it was wholly disproportionate to whatever "threat" existed.<sup>169</sup>

#### D. "Humanitarian" Intervention

The final defense suggested by Indonesian statements is that the invasion was undertaken to rectify inhuman conditions in East Timor.<sup>170</sup> Five standards have been used to evaluate the legitimacy of a putative humanitarian intervention:<sup>171</sup>

- (1) an immediate and extensive threat to fundamental human rights,

as a matter of principle and policy, anticipatory self-defense is open to certain objections. It involves a determination of the certainty of attack, which is extremely difficult to make, and necessitates an attempt to ascertain the intention of a government. This process may lead to a serious conflict if there is a mistaken assessment of a situation. *Id.* at 259. In the modern era, the right of anticipatory self-defense has been under general attack, leading one jurist to conclude that U.N. Charter Article 51 does not permit anticipatory action. *Id.* at 278. Another jurist notes that the United Nations' refusal to give rein to the doctrine should be viewed merely as reluctance on its part to encourage use of the right rather than a restriction of the right as laid down in *The Caroline*. J. MOORE, 2 DIG. OF INT'L L. 409 (1906); R. HIGGINS, *supra* note 137, at 203.

168. See text accompanying notes 149-50 *supra*.

169. The border clashes in East Timor began shortly after the end of the civil war in the colony in mid-September, 1975. Full-scale fighting took place in the border town of Batugade in mid-October. *Issue on East Timor, supra* note 4, at 26. It was also reported that in early October, Indonesia had seized three towns across the border. Kamm, *supra* note 1, at 58. Indonesia accused the FRETILIN forces of frequent border violations and the bombardment of towns inside Indonesian Timor. *Issue on East Timor, supra* note 4, at 27. The border clashes between FRETILIN forces and Indonesia lasted for just over two months before the Indonesian invasion. No evidence appears in the record to indicate that FRETILIN attempted to occupy any part, substantial or otherwise, of Indonesian Timor. Nor has Indonesia attempted to assert such a claim. In the absence of evidence to indicate a full-scale invasion contemplated by or attempted by FRETILIN, Indonesia's intervention on December 7, 1975, was certainly disproportionate to the threat presented by the border clashes. See notes 150-51 *supra*.

170. In the General Assembly, Indonesia argued that "[a]s a result of the fighting in Portuguese Timor, Indonesia was confronted with serious difficulties. First, the thousands of refugees had to be fed and cared for; they were prepared to return to their villages if Indonesia could guarantee their safety." 30 U.N. GAOR, C.4 (2180th mtg.) 356, 357, U.N. Doc. A/C.4/30/SR. 2180 (1975). This argument was made on December 3, 1975, four days before the invasion. It was repeated almost verbatim in the Security Council two weeks later. See 30 U.N. SCOR (1864th mtg.) 37, U.N. Doc. S/PV. 1864 (1975).

171. "Humanitarian intervention" is the threat or use of armed force by a state, group of states, a belligerent community, or an international organization, with the object of protecting human rights. See Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217 (J. Moore ed. 1974). Humanitarian intervention as a justification for intervention has been the subject of much study and scholarly writing. See, e.g., *HUMANITARIAN INTERVENTION AND THE UNITED NATIONS* (R. Lillich ed. 1973); Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 *IOWA L. REV.* 325 (1967); Franck & Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 *AM. J. INT'L L.* 275 (1973); Lillich, *Intervention to Protect Human Rights*, 15 *MCGILL L. J.* 205 (1969). The current debate centers on the doctrine's existence as much as its contemporary relevance. Historically, there have been several cases where intervention allegedly occurred for humanitarian purposes. See M. GANJI, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS*

particularly a threat of widespread loss of human life; (2) a proportional use of force which does not threaten greater destruction of values than the human rights at stake; (3) a minimal effect on authority structures; (4) a prompt disengagement, consistent with the purpose of the action; and (5) immediate full reporting to the Security Council and appropriate regional organizations.<sup>172</sup>

Some jurists have suggested additional standards, including the relative disinterestedness of the state invoking the coercive measures.<sup>173</sup>

There is little if any dispute that the people of East Timor had been, prior to the Indonesian invasion, living in conditions of abject poverty.<sup>174</sup> There is no evidence, however, to suggest that those conditions rose to the level of human rights violations. Inhuman conditions that would have constituted human rights violations arose primarily as a result of the Indonesian invasion.<sup>175</sup> Yet, even assuming the prior existence of human rights violations in East Timor, Indonesia's intervention failed to meet any of the other conditions. There is no evidence to indicate that Indonesia solicited the support of the U.N. or other multinational organizations.<sup>176</sup> Its use of force was not proportional to humanitarian objectives.<sup>177</sup> Indeed, rather than correcting the inhuman conditions in East Timor, it aggravated, prolonged, and probably created those conditions.<sup>178</sup> Nor was the use of force terminated

22-24, 26-37, 39-41. *But see* Franck & Rodley, *supra* ("examples" of humanitarian intervention do not support this doctrine).

172. Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 205, 264 (1969).

173. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in LAW AND CIVIL WAR IN THE MODERN WORLD 229, 248 (J. Moore ed. 1974). *See also* Reisman, *Humanitarian Intervention to Protect the Ibos* in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 167, 193 (R. Lillich ed. 1973); Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 347-51 (1967); Nanda, *The United States' Action in the 1965 Dominican Crisis: Impact on World Order*, 43 DENVER L. J. 439, 475 (1966).

174. N.Y. Times, Aug. 12, 1975, at A2, col. 3.

175. *See* note 1 *supra*.

176. Indonesia's only contact with the U.N. came after the invasion, when in the Fourth Committee, the General Assembly and the Security Council, it attempted to justify its intervention on the grounds stated throughout this Article. *See* 30 U.N. GAOR, C.4 (2185th mtg.) 397, 400, U.N. Doc. A/C.4/SR.2185 (1975); 30 U.N. GAOR (2439th plen. mtg.) 42, U.N. Doc. A/PV. 2439 (1975); 30 U.N. SCOR (1864th mtg.) 31, U.N. Doc. S/PV. 1864 (1975).

177. On December 7, 1975, the day of the Indonesian invasion, there did not exist in East Timor conditions which would have warranted a use of force for humanitarian reasons. FRETILIN was in control of East Timor. There were no reports of violations of human rights perpetrated by the FRETILIN administration. *See Issue on East Timor, supra* note 4, at 23. A proportional response to the problem of starvation in East Timor certainly would not include a full-scale invasion and occupation.

178. *See* note 1 *supra*; *Issue on East Timor, supra* note 4, at 34-35.

as soon as the objectives of the intervention had been achieved.<sup>179</sup> Finally, in view of the annexation of East Timor,<sup>180</sup> Indonesia cannot reasonably maintain that humanitarian concern was its primary motive for the invasion. Annexation is not a necessary or collateral consequence of humanitarian intervention.<sup>181</sup> Viewed as an independent basis for invading East Timor, the annexation casts significant doubts on the "humanitarian" nature of Indonesia's invasion.<sup>182</sup>

It should also be noted that the defense of humanitarian intervention is not explicitly recognized in the U.N. Charter. The failure to include a provision expressly recognizing the defense has led some jurists to argue that the Charter does not recognize the doctrine as justification for unilateral armed interventions.<sup>183</sup> In this event, of course, Indonesia's claim that humanitarian considerations motivated its invasion is irrelevant.

## Conclusion

Indonesia's armed attack on East Timor and denial of self-determination to the East Timorese flagrantly violated international law. Self-determination was denied by the Indonesian annexation of East Timor and Indonesia's attempts to justify the annexation on the grounds that the East Timorese had expressed a willingness to be "reintegrated,"

179. Indonesian forces remain in East Timor even though resistance from FRETILIN forces has all but ceased. Kamm, *supra* note 1, at 35.

180. See note 44 *supra*.

181. On the contrary, annexation is in complete violation of the notions of "prompt disengagement" and "minimal effect on authority structures." See text accompanying note 172 *supra*.

182. The dubious nature of intervention as a basis for annexation is clear when considered in the context of India's intervention in East Pakistan (now Bangladesh). Gross violations of human rights were prevalent within East Pakistan and refugees were crossing the Indian border in larger numbers. Nevertheless, India made no effort to incorporate East Pakistan into its territory. See Franck & Rodley, *supra* note 171; Nanda, *Self-Determination in International Law*, 66 AM. J. INT'L L. 321 (1972).

183. This proposition is debatable. Brownlie maintains that state practice in the period of the U.N. Charter does not establish an interpretation of the Charter favorable to intervention to protect human rights. Brownlie, *supra* note 171, at 222. A number of leading modern authorities either make no mention of humanitarian intervention and take a general position that militates against its legality, or expressly deny its existence. J. BRIERLY, *THE LAW OF NATIONS* 309-10 (5th ed. 1955); P. JESSUP, *A MODERN LAW OF NATIONS* 157-58 (1956); Bishop, *General Course of Public International Law*, 115 RECUEIL DES COURS 423-41 (1965); H. KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 58-87 (2d rev. ed. 1968). Other modern authorities have rejected the notion that the U.N. Charter prohibits intervention for humanitarian purposes, see, e.g., McDougal, *Authority to Use Force on the High Seas*, 20 NAVAL WAR C. REV. 19, 28-29 (1967); W. REISMAN, *NULLITY AND REVISION* 848-50 (1971); Lillich, *Intervention to Protect Human Rights*, 15 MCGILL L.J. 205, 230 (1969), and have developed criteria by which to assess claims of humanitarian intervention, see *id.* at 248; Nanda, *supra* note 173, at 475; Reisman, *supra* note 173, at 193.

that historical, ethnic, and cultural ties between Indonesia and East Timor existed, and that East Timor had no economic viability are factually and legally unsupportable. Similarly, Indonesia cannot justify its invasion of East Timor by arguing self-defense, invitation, long-term regional security considerations, or humanitarian intervention. Again, the factual and legal support for these arguments does not exist.

In spite of the weakness of its legal position, Indonesia has had the diplomatic support of a number of fellow Islamic states and of fellow members of ASEAN and OPEC,<sup>184</sup> as well as the "understanding" of its neighbors, Australia and New Zealand, and its ally, the United States.<sup>185</sup> At the time of this writing, there is nothing concrete to show for the widely touted initiative by the Portuguese government of September 12, 1980, whereby Lisbon reaffirmed the Timorese right to self-determination and pledged itself to work with all interested countries towards a settlement.<sup>186</sup> Nevertheless, Portugal's insistence in not giving recognition to the Indonesian takeover represents a major barrier to Indonesia's efforts to have the matter slip away completely from world attention and scrutiny.

184. See note 67 *supra*.

185. Each of these countries has what appears to it to be perfectly adequate political reasons for not wanting to enrage Indonesia. Each is staunchly anti-Communist and views Indonesia as an ally in this cause. Each has an interest in Indonesian oil. Indonesia is not currently a substantial source of oil for any of them, but it is an important insurance supply in the event of difficulties in the Middle East. Australia expects that Indonesia might take a favorable position in shelf delimitation negotiations, see note 29 *supra*, although negotiations on the delimitation of the continental shelf between Australia and Timor are still continuing with the Indonesians. The Law of the Sea negotiations play a role in United States relations with Indonesia. Apparently, Indonesia acquiesces in the United States' position that its submarines do not have to surface when passing through international straits such as those joining the Indian and Pacific Oceans, which are in waters claimed by Indonesia as archipelagic waters. See M. LEIFER, *INTERNATIONAL STRAITS OF THE WORLD* 160-68 (1978). Daniel Patrick Moynihan, former United States Representative to the United Nations, boasted of the way in which he helped keep the issue of East Timor muted in December, 1975. Concerning the questions of East Timor and Western Sahara, he has written:

China altogether backed *Fretilin* in Timor, and lost. In Spanish Sahara, Russia just as completely backed Algeria, and its front, known as *Polisario*, and lost. In both instances the United States wished things to turn out as they did, and worked to bring this about. The Department of State desired that the United Nations prove utterly ineffective in whatever measures it undertook. The task was given to me, and I carried it forward with no inconsiderable success.

D. MOYNIHAN, *A DANGEROUS PLACE* 247 (1978).

186. See Letter dated September 17, 1980 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General, U.N. Doc. A/C.4/35/2 (1980). The notion of an ousted colonial power returning to complete the decolonization process might have been completely discounted had it not been for the precedent of the British return to Rhodesia/Zimbabwe to supervise the elections there notwithstanding an absence of fifteen years. In an interview with the author on January 15, 1981, Mr. Ramos Horta of FRETILIN did not preclude the possibility of a transitional role for Portugal should the Indonesians be dislodged.

The United Nations has been the main forum for discussion of the Timor issue. What conclusions can be drawn about its role in the affair? The Security Council has not discussed the item since April, 1976, which probably indicates that the votes are simply not there to put it on the agenda, let alone to adopt a substantive resolution. But the Special Committee on Decolonization and the Fourth Committee of the General Assembly continue to hold annual debates on the whole question and to adopt appropriate resolutions. In short, the fact that Indonesia has acted contrary to international law has been reiterated—perhaps not with enthusiasm but reiterated nonetheless—each time the organization has considered the matter. In the face of slow diplomatic erosion, supporters of self-determination and independence for the East Timorese must take some comfort from the retention of the item on the international agenda. Sometimes in the symbolic world of diplomacy, keeping the matter “under review” is about the nearest thing to a sanction that can be achieved. In the broad sweep of history, keeping the item alive may provide some moral suasion aiding the eventual capitulation of Indonesia.<sup>187</sup> The United Nations has shown some capacity to stick with intractable hard cases. One is reminded of the fact that the organization persisted with the question of the Portuguese territories and with the racist Rhodesian regime for nearly two decades, in situations where it appeared that nothing would be done about either of those two matters. The organization has persisted with the Southwest Africa/Namibia question for three and one-half decades, with the end still not in sight. East Timor seems destined to join Namibia as an issue that simply refuses to go away.

187. As long as the item remains on the agenda of the General Assembly as a decolonization issue it is hard for the Indonesians to claim that their annexation has been accepted by the world community. Retention of the matter on the agenda represents a kind of sanction to back up Article 5.3 of the General Assembly's Definition of Aggression, *see* note 132 *supra*, which provides that “[n]o territorial acquisition or special advantage resulting from aggression shall be recognized as lawful,” and its Declaration on the Strengthening of International Security, G.A. Res. 2734, 25 U.N. GAOR, Supp. (No. 28) 22, U.N. Doc. A/8028 (1970), which provides that “no territorial acquisition resulting from the threat or use of force shall be recognized as legal.” *Id.* para. 5. In the long term, states tend to ignore black letter proscription against the recognition of forceful acquisition of territory. *See generally* SUTER, *supra* note 1, at 5-8 (Australian *de facto* recognition of Indonesia's authority over East Timor; Australia's recognition and later de-recognition of Soviet control over the Baltic states); *Human Rights in East Timor: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 95th Cong., 1st Sess. 77 app. (1977) (United States refusal to recognize Soviet incorporation of the Baltic states; more ambiguous American behavior concerning East Timor and Western Sahara).



## **ANNEX 114**

General Assembly, Special Committee on Decolonization, 284<sup>th</sup> Meeting, UN Doc.  
A/AC.109/PV.284 (30 September 1964) (extract)



**Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:  
report of the Special Committee on the Situation with regard to the Implementation of the  
Declaration on the Granting of Independence to Colonial Countries and Peoples\***

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\*\* Consisting of documents A/5800 and Corr.1, dated 31 December 1964 and 12 January 1965; A/5800/Add.1 and Add.1 (part II) dated 10 August and 30 December 1964; A/5800/Add.2, dated 18 December 1964; A/5800/Add.3 and 4, dated 5 January 1965; A/5800/Add.5, dated 12 January 1965; and A/5800/Add.6 and 7, dated 18 January 1965.

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ments submitted by Guatemala (A/L.325), since they provided for a limitation of the fundamental right of all peoples to self-determination and were thus contrary to paragraph 2 of the Declaration, which stated that "All peoples have the right to self-determination".

97. It was surprising that Spain should now seek the help of paragraph 6 of resolution 1514 (XV) in view of the fact that the Spanish representative had vehemently opposed Morocco's claims to Ceuta and Melilla. During the debate in question, six delegations had made statements showing that paragraph 6 in no way sanctioned the recovery of territory of a neighbouring State against the wishes of its population. In order to maintain peace and security in the world, the United Nations must start by accepting the *status quo* as it was at present, not as it had been *ante bellum*. To attempt to rectify the international errors and injustices of the past was apt to lead to confusion and further injustices.

98. Obviously, the Committee could not tell the people of Gibraltar, in the face of their own wishes and desires freely expressed by their elected representatives, that they should be freed from British colonialism, to which they had not objected, and be handed over to Spanish colonialism, against which they had openly protested. General Assembly resolution 1514 (XV) was the hope and creed of all colonial peoples, but to give paragraph 6 the overriding importance and interpretation sought was nothing less than the betrayal of the hopes and confidence of the colonial peoples and the very abrogation of the principles of the Charter.

99. The people of Gibraltar had made clear what they wanted for themselves: free association with the United Kingdom. They hoped that the Committee would help them to achieve their aspirations.

#### General statements

100. The representative of the United Kingdom, recalling that his delegation had on 11 September 1963 made a full statement regarding the situation in Gibraltar and the United Kingdom's policy for future constitutional development in Gibraltar (A/5446/Rev.1, chap. XII, paras. 49-52), said that certain constitutional changes effected since that time had been fully described by Sir Joshua Hassan, Chief Minister of Gibraltar, and by Mr. Isola, the leader of the Opposition. As his delegation had stated at the last session, the United Kingdom Government respected the aspirations of the people of Gibraltar and constantly sought to meet them. It was always ready to consider proposals for further constitutional changes put forward by the Gibraltar people, and, in accordance with the principle of self-determination, his Government left them entirely free to choose what should be the form of their association with the United Kingdom. If any proposals of that kind were advanced, his Government would consider them and work out, with the elected representatives of the Gibraltar people, arrangements for a continuing association acceptable to both parties. He was sure that such an association would not in any way harm the good relations between Gibraltar and Spain. He could give the Committee an unqualified assurance that the constitutional changes recently introduced in Gibraltar would in no way damage the interests of Spain or of any other country. His delegation was confident that the Committee would welcome those changes and the statements of policy made by his

Government. The Committee would perhaps wish to add its hope that the future status of Gibraltar would be settled in accordance with the wishes of its people and in a manner conducive to peaceful and harmonious relations between Gibraltar and Spain.

101. The representative of Spain recalled that in September 1963 his delegation had explained the reasons that had prompted it to take part in the debate on Gibraltar (A/5446/Rev.1, chap. XII, 53-66). Gibraltar, an enclave in Spanish territory which had been ceded to the United Kingdom under the Treaty of Utrecht for use as a military base, had been regarded by the United Kingdom Government as a Crown Colony and later as a Non-Self-Governing Territory. Hence, according to the basic criteria of the United Nations, it should come within the general process of decolonization. Having expelled the original inhabitants of Gibraltar, the United Kingdom Government had allowed a population of the most varied origins to settle round the base, united solely by the fact of the United Kingdom citizenship that had been granted to them. The conversion of the base into a colony and the measures that the United Kingdom Government was enacting there were a direct violation of paragraph 6 of General Assembly resolution 1514 (XV). Spain had consequently asked that that paragraph should be applied in the case of Gibraltar. It had offered to hold bilateral talks with the United Kingdom with a view to arranging for the restoration of Gibraltar to Spain in conditions of fairness to all concerned.

102. Not only had the United Kingdom ignored that proposal but it had prompted certain action which might be said to have changed completely the status of Gibraltar as laid down in the Treaty of Utrecht. In September 1963, Sir Joshua Hassan and Mr. Isola had appeared before the Committee as petitioners, not to ask for the protection of the interests that Spain had always been prepared to respect, but to declare that 17,985 persons established round a United Kingdom military base and protected by the military power of that country constituted a population with its own political personality and with all rights over the Territory in which it lived, including the right of self-determination. Moreover, in a booklet entitled *The Future of Gibraltar*, which they had distributed to the members of the Committee, they had repeated that claim. No mention had been made of the Treaty of Utrecht; indeed, the petitioners in question had tried by their mere presence to cancel out that Treaty and to ask the United Nations to regard the people they claimed to represent as little less than a new nation. Never in the whole history of decolonization had a more brazen attempt been made to hoodwink the international community represented in the United Nations. It was the duty of Spain to expose that political manoeuvre in its true light.

103. The appearance before the Committee of the representatives of the so-called Gibraltarians was the result of a policy initiated by the United Kingdom in 1950. Up to that time United Kingdom policy in Gibraltar had been based upon observance of the Treaty of Utrecht, but from 1950 onwards it had tried to replace the rights granted to it under the Treaty by the so-called rights of the 17,985 British subjects established there in place of the Spanish inhabitants who had been expelled. Indeed, Sir Joshua Hassan and Mr. Isola had actually stated that the rights they claimed were based, not on the Treaty of Utrecht, but on the fact that the people they represented had been living

in Gibraltar for 250 years. Such a claim was neither more nor less than an attempt to cancel the very Treaty upon which the United Kingdom based its claim to remain on Spanish soil.

104. It was clear from article X of the Treaty of Utrecht that while Spain had yielded to the United Kingdom full propriety of the town, port, fortifications and forts of Gibraltar, the exercise of that propriety had been made subject to various limitations of an economic, military and administrative character. The most important of those limitations, however, was the stipulation that if at any time the United Kingdom was to give, sell or by any means alienate the propriety of Gibraltar, preference was to be given to Spain. To declare that such guarantees did not give Spain some rights with regard to Gibraltar was to deny an obvious fact.

105. Moreover, the Treaty of Utrecht was an agreement between two parties, under which they had jointly established a given status for Gibraltar. There was no provision under which the present population of Gibraltar could claim any rights; on the contrary, it had no legal existence under the Treaty and no right whatever to dispose of any part of Gibraltar. The actual territory of what was now the city of Gibraltar was still to a great extent the property of the British Crown and the present inhabitants were merely British citizens who were temporarily living round a United Kingdom base on Spanish territory. The fact that they now claimed to form a political entity was all part of the policy pursued by the United Kingdom since 1950.

106. The fact was that when the United Kingdom Government had realized that colonialism was coming to an end it had been anxious to maintain the military base of Gibraltar, for reasons of both strategy and prestige. It had therefore decided that its presence in Gibraltar should be supported in the eyes of the world by the expressed will of the present inhabitants of Gibraltar. Hence its unilateral decision of 1950, without consulting Spain, to give Gibraltar a Legislative Council and an Executive Council, a step which had aroused the natural indignation of the Spanish people. When the Spanish Ambassador in London had tried to explain his country's views on the matter to the United Kingdom Government, he had been refused a hearing and the steps taken by the Spanish Government in the Campo de Gibraltar had been regarded as acts of hostility towards the United Kingdom and the Gibraltarians, to whom the views and the rights of the Spanish Government had apparently never been explained.

107. From the attitude adopted by Sir Joshua Hassan and Mr. Isola it could only be assumed that the United Kingdom had never informed the Gibraltarians that the Spanish Government was prepared to respect their interests; on the contrary, Spain had probably been depicted as a tyrannical and expansionist country which was trying to annex Gibraltar and to expel its population. Meanwhile Spain was being informed that the United Kingdom was remaining in Gibraltar in order to protect the interests of its inhabitants, who were urging the United Kingdom Government to insist that Spain should open up full means of communication between the city and the Campo de Gibraltar and abandon its policy with regard to that city.

108. The United Kingdom Government had assured the Spanish Government that it would respect its commitments under the Treaty of Utrecht and would

consequently not grant the present inhabitants of Gibraltar the rights they were claiming. Proof of that was to be found in the statement made in Gibraltar in April 1963 by the United Kingdom Parliamentary Under-Secretary of State for the Colonies, to the effect that no constitutional changes were under consideration.

109. There were only two alternatives open to the United Kingdom Government: either to respect the minimum obligations laid upon it by the Treaty of Utrecht and hence to dispossess the inhabitants of Gibraltar of any political institutions other than those that were purely United Kingdom institutions, or to give those inhabitants a political entity for which no provision had been made, in other words to grant them self-determination as though Spain had no say whatever in the matter. If it chose the first alternative, it would appear to the world to be following a colonialist policy towards the present inhabitants of Gibraltar; if it chose the latter, its colonialist policy would then be directed against Spain, with the present inhabitants of Gibraltar and even the United Nations being used as instruments to further that policy. It was therefore essential that Spain's offer of negotiation should not be cast aside. Just as Spain was the only country that could settle the economic future of Gibraltar, so was it also the only country which, respecting United Kingdom interests, could remove all colonial aspects from the presence of the United Kingdom there.

110. A series of political measures had recently been adopted in Gibraltar with the aim of continuing the policy initiated in 1950 and of presenting the Special Committee with a *fait accompli*. In a memorandum dated 6 May 1964, Spain had protested to the United Kingdom about the latter's proposal to introduce in Gibraltar constitutional reforms, involving the establishment of a Government for the 17,985 persons encamped around its military base. It had stated that the unilateral decision taken by the United Kingdom in 1950 to endow the city of Gibraltar with institutions which were not within the legal framework established by the Treaty of Utrecht had been designed to replace the legal "status" adopted in 1713 by a new one in which the rights of Spain were to be totally disregarded and that the new reforms would accentuate the discrepancy between what had been agreed upon at Utrecht and the actual political reality.

111. The Spanish Government had further stated in its memorandum that the objective of its consultations with the United Kingdom should be to devise a solution, taking into account Spain's rights over the whole of its national territory, whereby the colonial situation in Gibraltar could be abolished and the interests of the United Kingdom and of the present population of Gibraltar could be protected. It had stated that the United Kingdom should refrain from introducing into the structure of the colony of Gibraltar any change designed to interfere with the decision which the United Nations might adopt on the matter.

112. On 1 June 1964, the United Kingdom Government had replied to the memorandum, rejecting the Spanish arguments and refusing to acknowledge that the Treaty of Utrecht granted Spain some rights over a part of Spanish Territory. Accordingly, on 30 June 1964, the Permanent Representative of Spain to the United Nations had sent a letter to the Chairman of the Special Committee (A/AC.109/91) notifying him of the manoeuvres of the United Kingdom Government. Despite those warnings, on 10 September 1964, local elections had been held to establish a Government,

with a Prime Minister, for the 17,985 United Kingdom citizens at the Gibraltar base.

113. At the 281st meeting, the United Kingdom representative had said that his Government fully accepted that the Gibraltar people should choose what should be the form of their association with Britain. The United Kingdom therefore considered that its presence in Gibraltar was based not upon a contractual agreement with Spain but upon the desire of the population which it had been laboriously building up on the Rock. The United Kingdom thus declared itself to be released from its obligations under the Treaty of Utrecht, which it was abrogating without taking into consideration the other party—Spain.

114. The United Kingdom was using the population of Gibraltar for its own manoeuvres. When the United Nations had embarked upon the task of decolonization, that population's right to decide its own fate had been invoked, once an assurance had been obtained that the decision would protect United Kingdom interests. The United Nations was being asked to approve that manoeuvre and to clear the United Kingdom of any suspicion of colonialism in Gibraltar. Once such United Nations approval had been given, the local authorities, supported by the United Kingdom Government, would demand greater freedom of communication between Gibraltar and Spain. Any measures which Spain might then take to protect itself against smuggling or illicit economic expansionism would be regarded as acts of hostility against the so-called "people of Gibraltar". The door would be perpetually open for an increasing usurpation of Spanish sovereignty over the territory adjacent to the Rock. Such a situation would be quite unbearable. Consequently, the Spanish Government considered that any further steps to modify the status of Gibraltar, without taking into account the rights and opinion of Spain, would be sufficient grounds for it to consider itself released from all its obligations under the Treaty of Utrecht.

115. With regard to the origin of the present inhabitants of Gibraltar, it should be recalled that Gibraltar had been occupied militarily on 4 August 1704 by an Anglo-Dutch fleet defending the right of Archduke Charles of Austria to the Spanish Crown. On that occasion Admiral Rooke had taken possession of Gibraltar in the name of his Queen and not of the Archduke. The inhabitants of Gibraltar had thus been transferred, not from the authority of a Spanish monarch to that of another prince who aspired to the Spanish throne, but from the authority of Madrid to the authority of London. In the face of such a radical change, it was hardly surprising that the Municipal Council of Gibraltar, with the consent of the majority of the inhabitants, had decided to abandon the town and settle provisionally in the city of San Roque.

116. By the time the United Kingdom had made its appearance in the area, Spain had become a modern and united State. Before its occupation, Gibraltar had been a Spanish city endowed with legal institutions similar to those of any other Spanish city. Since its occupation, it had been an empty town occupied by a foreign army under the sole authority of a military governor from the United Kingdom. While the original Spanish inhabitants of Gibraltar had been the owners of the town and the surrounding countryside, the United Kingdom owned almost all the land on which the city was situated.

117. It was not true to say, as did the petitioners, that the present inhabitants of Gibraltar were descended

from families which had lived there without interruption for 250 years. During the eighteenth century, circumstances had prevented the settlement of civilians around the fortress. In fact, the first inhabitants had really appeared when Spain and the United Kingdom had formed an alliance against Napoleon in the nineteenth century. At the beginning of that century, epidemics had taken a heavy toll of the civilian population and the United Kingdom garrison; their places had been filled by the arrival of Spaniards from the Campo. In 1856, the United Kingdom Governor of the fortress had written that the population was as Spanish in its customs, language and religion as when Gibraltar had been ceded to the United Kingdom. After the Second World War, many civilians who had been evacuated had refused to return. The fact that, in addition to the 17,985 inhabitants of Gibraltar, there were 4,800 United Kingdom citizens resident in the city did not change the situation or give those citizens any special political rights. Spanish was the local language spoken in Gibraltar, many of whose inhabitants had married Spaniards from neighbouring cities.

118. In Gibraltar, labour, legislative, executive, administrative, municipal, judicial, financial and cultural powers were concentrated in the hands of Sir Joshua Hassan. The internal government of Gibraltar, under the authority of the United Kingdom, was in fact Sir Joshua Hassan. The existing population of Gibraltar had no international juridical status in relation to Spain or to other countries. The aim of the internal political organization of Gibraltar was to show the world that its inhabitants were not being colonized by the United Kingdom. The fact was, however, that those inhabitants were not only the instruments by which a colonial situation was being preserved in Spanish territory but the very quintessence of that situation, which Spain was not prepared to tolerate.

119. Under the Treaty of Utrecht, the present inhabitants of Gibraltar, represented before the Special Committee by Sir Joshua Hassan and Mr. Isola, had no political rights either before Spain or before the international community. They were therefore claiming the right to self-determination, basing their claim not on the Treaty of Utrecht but on a juridical doctrine elaborated by the United Nations and embodied in General Assembly resolutions 1514 (XV) and 1541 (XV).

120. Article 73 of the Charter defined which peoples possessed the right to self-determination and spoke of "territories whose peoples have not yet attained a full measure of self-government". The use of the phrase "territories whose peoples" showed that those who drafted the United Nations Charter had been envisaging a complete identity between the people and the territory they inhabited. The entire juridical doctrine under which the decolonization process was being conducted was based precisely on the idea that the rights of the people of a territory over their own territory prevailed over those of any other country. Consequently, only the people of a territory possessed the right to self-determination proclaimed by the United Nations. That interpretation was confirmed by principle I in the annex to resolution 1541 (XV) and by paragraph 5 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which spoke of the "peoples of those territories". It was therefore essential, before conceding that a people had the right to govern their own future, to establish the existence of an identity between that people and their territory.



121. Gibraltar clearly did not belong to its present 17,985 inhabitants, but rather to the inhabitants of the nearby town of San Roque, descendants of the original inhabitants of Gibraltar, who had been demanding its return for 250 years. If the Treaty of Utrecht ceased to exist, the inhabitants of San Roque alone would have a claim to the territory. The United Kingdom had always regarded the inhabitants of Gibraltar as simply British subjects and had never acknowledged that they had any special rights to the territory. Only since the beginning of the process of decolonization had it sought to use the population as a means of maintaining its rule. The Gibraltarians were demanding in return the recognition of their existence as a separate political entity—at Spain's expense, it would appear. Spain, however, did not recognize the claim of the present inhabitants of Gibraltar to the piece of Spanish territory on which, through an accident of colonial history, they happened to be living.

122. In his statement before the Committee on 19 September 1963 (214th meeting), Sir Joshua Hassan had demanded the right of self-determination for the present population of Gibraltar, which, he had said, would then choose association with the United Kingdom in the form envisaged in the annex to General Assembly resolution 1541 (XV); under that association, the United Kingdom would preserve its position at Gibraltar by maintaining its naval base and military installations. If that form of self-determination was granted, the United Nations would be giving the United Kingdom *carte blanche* to remain in Gibraltar for ever.

123. At the 1083rd meeting of the Security Council, during the discussion of the report prepared by the Secretary-General<sup>1</sup> in pursuance of Security Council resolution 180 (1963), the United Kingdom representative had stated that the peoples of colonial territories must be given the opportunity, through self-determination, to decide their own future. That statement was in keeping with the position taken by the United Nations. As the representative of Uruguay had pointed out at the 1268th plenary meeting of the General Assembly, self-determination did not automatically result in independence, but sovereignty passed from the administering Power to the colonial people in question for at least a fleeting moment even when the latter decided in favour of free association or integration with the former metropolitan country. The United Kingdom representative in the Committee had endorsed that view. Yet self-determination in that sense was not what had been demanded by Sir Joshua Hassan, with the apparent support of the United Kingdom, for the present population of Gibraltar. Self-determination in the form asked by the Gibraltarians would not alter the present link between the Territory and the British Crown for even the fleeting moment referred to by the Uruguayan representative. The United Kingdom hoped in that way to be able to argue that the Treaty of Utrecht remained in force. It was urging other countries to apply principles which it was evidently unwilling to apply to itself.

124. There were only two possible solutions to the problem of Gibraltar: the implementation of paragraph 6 of General Assembly resolution 1514 (XV) on the basis of negotiations between Spain and the United Kingdom, as he had urged in September 1963, or the

granting of self-determination to the population of Gibraltar, as demanded by Sir Joshua Hassan. The application of the principle of self-determination in the case of Gibraltar would represent a violation of paragraph 6 of resolution 1514 (XV) and hence of the United Nations Charter; it would mean that the international community recognized the present population of Gibraltar as a political entity distinct from the United Kingdom.

125. The granting of self-determination to that "pseudo-population" would have serious practical as well as legal consequences. Legally, it would mean sanctioning the abrogation of the Treaty of Utrecht in order to hand over to the present population of Gibraltar a piece of Spanish territory which had been ceded to the United Kingdom 250 years earlier for certain limited and clearly defined purposes. The practical effects of the application of self-determination would be even more dangerous. Spain would no longer consider itself bound by the Treaty of Utrecht. It would regard Gibraltar as a piece of Spanish territory whose occupation by its present inhabitants was based on force. Furthermore, Spain would refuse to maintain the present level of living of the people of Gibraltar, whose economy was based on colonial exploitation of the territory's Spanish "hinterland".

126. If the Committee and the General Assembly decided that the appropriate way to decolonize Gibraltar was to apply the principle of self-determination to its present inhabitants, Spain could not maintain normal relations with the new political entity that would then come into being. It could have no further contact with Gibraltar unless the United Kingdom completely terminated its presence there, since his country took the view that the granting of self-determination to Gibraltar would relieve it of all its obligations towards the United Kingdom. If the United Kingdom did not withdraw, Spain would regard the creation of a new Gibraltarian political entity as simply a trick designed to maintain colonialism; communications between Spain and Gibraltar would be cut and the inhabitants of Gibraltar would henceforth be regarded as *persona non gratae* in Spain. He presumed that the representative of Cambodia had had those legal and practical consequences in mind when he had suggested in the Committee on 18 September 1963 that the United Kingdom should withdraw from Gibraltar so that the latter's inhabitants could negotiate with Spain on the best means of protecting their legitimate interests.

127. As he had stated on 11 September 1963, Spain felt that the most equitable and proper method of decolonizing Gibraltar was the application of paragraph 6 of resolution 1514 (XV), which would eliminate a colonial foothold on Spanish territory and ensure that military bases were not transformed into colonies in other parts of the world in the future. As the representative of Uruguay had pointed out in the Committee on 12 September 1963, the proper interpretation of paragraph 6 would be in keeping with the principle laid down by the Organization of American States in resolution 47 of the Tenth Inter-American Conference in 1954. The only voice raised against the use of paragraph 6 as a means of decolonization was that of the United Kingdom, whose representative had stated in Sub-Committee III that the paragraph referred only to possible future attempts to disrupt a country's territorial integrity (A/AC.109/102, p. 45). He wondered whether the United Kingdom representative felt that there might be opportunities in the future

<sup>1</sup> See *Official Records of the Security Council, Eighteenth Year, Supplement for October, November and December 1963*, documents S/5448 and Add.1-3.

for the creation of new colonial situations like that in Gibraltar.

128. His country suggested that the procedure for applying paragraph 6 should be negotiated between Spain and the United Kingdom with due regard for the interests of the inhabitants of Gibraltar, who had much to gain from the solution he was proposing. It should be noted that the Bay of Algeciras, on which Gibraltar was situated, lay just to the west of the so-called Costa del Sol, a tourist area. Once returned to Spanish sovereignty, Gibraltar and the surrounding area could become a flourishing part of the Costa del Sol as well as a major communications link between Europe and Africa and between the Atlantic and the Mediterranean. It was only Gibraltar's colonial status which had prevented that from happening already.

129. Under his Government's proposal, the interests of the United Kingdom and of the inhabitants of Gibraltar would be safeguarded and the latter could maintain their personal ties with the United Kingdom. Spain was offering the people of Gibraltar a splendid future which neither the present colonial régime nor the isolation that would result from spurious self-determination could bring them. Furthermore, the existence of a prosperous city on the Bay of Algeciras would be a more effective guarantee of freedom of the seas than the present coastal batteries and military zones.

130. The representative of the United Kingdom stated categorically that his Government did not accept the Spanish representative's account of the historical and legal position. For over 250 years his Government had exercised over Gibraltar a sovereignty established and reaffirmed by Treaty, about which his Government had no doubt. The Spanish arguments did not affect his Government's view of the validity of its position in Gibraltar.

131. The representative of Uruguay recalled that during the debate on Gibraltar in 1963 his delegation had said that the Committee should ensure that the parties directly concerned, namely the United Kingdom and Spain, would settle their dispute bearing in mind above all the interests of the population which might be affected by any change in the Territory's status. Although some constitutional changes had taken place since that time, his delegation maintained that view, which had been endorsed by the delegations of Iraq, Tunisia, Venezuela and Syria. Its only purpose in speaking on the question again was to clarify certain aspects of the juridical basis of its position which the United Kingdom representative had called into question.

132. In his statement on 12 September 1963, (A/5446/Rev.1, chap. XII, paras. 70-72), the representative of Uruguay had analysed paragraph 6 of resolution 1514 (XV) and had demonstrated that the purpose of that paragraph had been to avoid the unconditional and indiscriminate application of the principle of self-determination, which might, in exceptional cases, be prejudicial to the principle of the territorial integrity of States established in the United Nations Charter.

133. The United Kingdom representative had challenged that interpretation in a statement made in Sub-Committee III on 16 September 1964 concerning the Falkland Islands (A/AC.109/102, p. 45). In particular, he had asserted that if it had been the intention of the General Assembly to indicate by paragraph 6 that, in cases where the principle of territorial integrity and sovereignty conflicted with

the principle of self-determination, the former should have precedence, it would have used a very different wording both in paragraph 6 and in paragraph 2 of resolution 1514 (XV).

134. The United Kingdom's interpretation failed to take into account the deliberations which had led to the adoption of paragraph 6, which clearly demonstrated the intention of the sponsors. During the debate on the draft resolution which had subsequently become resolution 1514 (XV), Guatemala had submitted an amendment stating that the principle of self-determination of peoples should not prejudice the territorial integrity and territorial claims of any State. In that connexion the Guatemalan representative had said that the settlement of disputes over territories improperly held by colonial Powers and claimed by other States as integral parts of their respective countries could not be governed by the principle of self-determination, for if that principle were applied in such cases it might violate the equally basic principle of the territorial integrity of States. The representative of Guatemala had subsequently withdrawn his amendment in view of the opinion expressed by a number of the sponsors of the draft resolution that the rights he wished to safeguard were fully protected by paragraph 6.

135. That being so, there was no reason to interpret paragraph 6 in the sense given to it by the United Kingdom representative, namely, that it related to the future and not to the past. It was true, as the United Kingdom representative had stated, that the word "attempt" implied a future action, but that was not the problem. The point was to determine to whom the injunction in paragraph 6 was addressed. It was obviously addressed not only to States administering colonial territories but to the Special Committee as well. It was the specific obligation of the Committee to ensure the full implementation of resolution 1514 (XV), taking into account the prohibition in paragraph 6. In other words, no recommendation or resolution adopted by the Committee in application of the Declaration should contribute, directly or indirectly, to the disruption of the national unity or territorial integrity of a country. Consequently, if the Committee, by taking a hasty decision which failed to take into account the particular circumstances, were to do anything which might jeopardize the national unity of a country, it would have failed to carry out its mandate by helping to perpetuate a colonial situation.

136. He went on to recall another argument adduced by the United Kingdom regarding the principle of self-determination. The United Kingdom delegation had stated that if so important a limitation had been placed on the principle, resolution 1514 (XV) would not have been supported by the majority of States Members of the United Nations. The record of the 947th plenary meeting of the General Assembly showed, however, that the United Kingdom had not only abstained in the vote on resolution 1514 (XV) but that one of the reasons it had given for doing so had been precisely that the Declaration contained paragraph 2 concerning self-determination.

137. He would like to know whether, since that time, the United Kingdom Government had modified its official position concerning the principle of self-determination. In that connexion, he referred to the United Kingdom comments on paragraph 5 of resolution 1966 (XVIII) of 16 December 1963 concerning the principle of equal rights and self-determination of

peoples (A/5725/Add.4). In the view of the United Kingdom self-determination of peoples was not a right, as it was described in paragraph 2 of resolution 1514 (XV), but merely a principle. Hence the colonial peoples had no legally enforceable right to self-determination; self-determination was merely one objective among many others and it was an objective to be pursued, not by the colonial peoples, but by the Powers administering colonial territories.

138. Another comment made by the United Kingdom Government was the following:

"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." (A/5725/Add.4, p. 5.)

139. That was precisely the argument of the Uruguayan delegation, but the application of that doctrine did not imply that the legitimate interests of any people should be sacrificed. In proposing that the dispute between Spain and the United Kingdom should be settled through negotiation, the Committee should stress that its main objective was to protect the interests and well-being of the peoples concerned, as specifically provided in Article 73 of the Charter.

140. In conclusion, he pointed out that the Committee was not a tribunal called upon to settle a territorial dispute by recognizing or denying the rights of any particular country. Its task was to bring about decolonization. There were, however, many ways of bringing about decolonization and there were solutions other than independence or free association. The integration of a territory with the State to which it belonged and from which it had been separated was also decolonization. If the Committee bore all those possibilities in mind, it would show itself to be both realistic and just and would help to develop friendly relations among peoples, which was one of the main objectives of the Charter.

141. The representative of the United Kingdom recalled that in the previous year's debate on Gibraltar a number of speakers, including the representative of Spain, had referred to Gibraltar as a Non-Self-Governing Territory, or even as a typical colonial Territory, which thus fell within the competence of the Special Committee. The United Kingdom delegation had not challenged that description and had contributed to the discussion by giving an account of Gibraltar's economic, political, constitutional and other institutions and problems. Further details on the Territory had been given by Sir Joshua Hassan and Mr. Isola, the representatives of Gibraltar's two main political groups.

142. In his statement of 11 September 1963 (A/5446/Rev.1, chap. XII, para. 67), he had said that in his delegation's opinion the Committee was not competent to discuss the merits of the Spanish claim to sovereignty over Gibraltar. That opinion seemed to be shared by the Committee as a whole; at any rate, he could not recollect anyone expressing the view that

the Committee was competent, by virtue of its terms of reference, to act as though it were a tribunal set up to consider and adjudicate on any territorial dispute between two States Members of the United Nations, even if those States were both colonial Powers and even if the territory in dispute was itself a colony. The United Kingdom delegation therefore considered it improper to enter into any detailed discussion of the legal questions arising out of the Spanish claim to Gibraltar and would confine itself to two observations of a general nature.

143. First, the Government of the United Kingdom did not accept the interpretation of the Treaty of Utrecht presented by the representative of Spain, nor did it accept that Spain had any right to be consulted on changes in the constitutional status of Gibraltar and its relationship with the United Kingdom. The United Kingdom Government was satisfied that the grant of Gibraltar to the United Kingdom under the Treaty, and as subsequently reaffirmed, was absolute and without any bar to future constitutional changes in Gibraltar or to the accession of its inhabitants to self-government, as required by the Charter. Even since 1946, when the United Kingdom had first transmitted information on Gibraltar in accordance with Article 73 e of the Charter, the Territory had been regarded as a Non-Self-Governing Territory under the terms of the Charter and had been treated as such by the United Nations. Even Spain did not deny that it was a colony. As the United Nations had consistently treated Gibraltar as a colony to which Article 73 applied, the United Kingdom would not have been fulfilling the requirements of that Article if it had not taken steps to enable the Gibraltarians to advance towards complete self-government. It was surely the ultimate irony not only that the representative of Spain should claim that the United Kingdom was trying to deceive the United Nations by fulfilling its obligations towards Gibraltar under the Charter, but also that Spain should attempt to take over the people of Gibraltar under the cover of General Assembly resolution 1514 (XV), which proclaimed the right of all peoples to self-determination.

144. Secondly, it was with surprise and regret that the United Kingdom delegate had heard the Spanish representative's contemptuous and menacing references to the people of Gibraltar, whom he accused of exploiting the hinterland, apparently because the "so-called" or "pseudo" Gibraltarians, as the Spanish representative described them, bought their vegetables there and recruited workers from it. Moreover, there seemed to be an implication that a population of only 17,985 people had no rights under the Charter. The economic blockade and the other steps which Spain threatened to take against the people of Gibraltar if they tried to assert their rights indicated all too clearly the true value that should be placed on any undertakings which Spain had given to protect the interests of the people of Gibraltar if they were to come under Spanish rule. The Spanish representative's words were unworthy of a people for whom both the British people and—as Sir Joshua Hassan and Mr. Isola had made clear—the people of Gibraltar had great respect.

145. The United Kingdom representative considered it necessary to state that his Government was fully conscious of its obligation to protect the welfare and defend the legitimate interests of the people of Gibraltar and would not hesitate for one moment to fulfil those obligations in whatever manner might be necessary.

146. As for the argument that the population of Gibraltar was too small to be allowed to accede to independence, it had been repeatedly stated in the Special Committee and its organs that the provisions of the Charter and of resolution 1514 (XV) applied to all populations, large or small. In that connexion, he recalled that at the 220th meeting of the Special Committee, the representative of the Soviet Union had stated that small populations had exactly the same rights to freedom as large populations. At the 221st meeting the representative of Iran had asserted that resolution 1514 (XV) applied fully and without exception to all colonial territories and peoples, large and small, and that it was merely a question of finding appropriate means to assist those populations in exercising their right to self-determination and independence. At the 222nd meeting the representative of Iraq had enumerated the various ways in which a people could accede to self-determination—formation of a separate independent State, association with an independent State, or complete incorporation of a State or territory into an independent State—and had added that it lay with the peoples concerned to decide in what way they would like to achieve the independence which was guaranteed to them under the Charter of the United Nations.

147. There could be no doubt that the people of Gibraltar were a colonial people; the Spanish representative's assertion that self-determination could not apply in the case of Gibraltar because there was no identity between the Territory and the people, whose only home was Gibraltar, was quite incomprehensible. Moreover, that assertion was completely unsupported by anything in the text of the Charter or of resolution 1514 (XV).

148. The representative of Spain had also based his case for denying the application of the principle of self-determination to Gibraltar on his own interpretation of paragraph 6 of resolution 1514 (XV); he had quoted the interpretation of that paragraph which the United Kingdom delegation had given in Sub-Committee III during the discussion on the Falkland Islands (A/AC.109/102, p. 45) and he had suggested that the United Kingdom alone adhered to that interpretation. That was quite untrue. There could be no doubt about the meaning of paragraph 6 of resolution 1514 (XV), which obviously referred to attempts in the future to disrupt the national unity and territorial integrity of a country and could not be twisted to justify attempts by countries to acquire sovereignty over fresh areas of territory under centuries-old disputes. The paragraph in question was clearly aimed at protecting colonial territories or countries which had recently become independent against attempts to divide them or to encroach on their territorial integrity at a time when they were least able to defend themselves because of the stresses and strains of approaching or newly achieved independence. It was only necessary to recall that the question of the secession of Katanga had been before the General Assembly in 1960 when resolution 1514 (XV) had been prepared, discussed and adopted.

149. Contrary to what the representative of Spain had suggested, the interpretation of paragraph 6 given by the United Kingdom delegation was accepted by other delegations, as was proved by the statements of, *inter alia*, the delegations of Pakistan and the Union of Soviet Socialist Republics, which Mr. Isola, the leader of the Gibraltar Opposition, had quoted in his

statement before the Special Committee on 23 September 1964 (see paragraph 96 above). In 1960, when Guatemala had submitted amendments to paragraph 6 which would have laid it down that territorial claims took precedence over the principle of self-determination, the Soviet Union delegation had opposed those amendments because they provided for a limitation of the fundamental right of all peoples to self-determination and were thus contrary to paragraph 2 of the proposed declaration, which quite rightly stated that all peoples had the right of self-determination (945th plenary meeting, para. 128).

150. As Mr. Isola had rightly said, at least two of the sponsors of the original draft, containing what was now paragraph 6, had made it clear in their statements that that was their interpretation of the paragraph. He would also refer the members of the Special Committee to the statement made by the representative of Iran along the same lines at the 926th meeting of the General Assembly and, in particular, to paragraphs 70 and 71 of the record of that meeting, which he read out to the Committee. In this statement the representative of Iran, referring specifically to paragraph 6 of the draft resolution, had said that aggression was an even graver crime than otherwise when directed against a recently independent country still traversing the difficult initial stages of development.

151. The new arguments presented by the representative of Uruguay in no way weakened the United Kingdom case. In that connexion, he quoted a passage from the statement of the representative of Nepal in the General Assembly on 5 December 1960 (935th plenary meeting, para. 74). That passage, which referred to the attempts which the colonial Powers might make to bring about the partial or total disruption of the national unity and territorial integrity of the colonial countries, made the intention behind paragraph 6 of resolution 1514 (XV) admirably clear and should discourage once and for all those who would base themselves on that wording in order to argue against the application of the principle of self-determination to colonial peoples.

152. The question whether self-determination was a right or a principle, to which the representative of Uruguay had alluded, was entirely academic in the case of Gibraltar.

153. The representative of Spain had said, at the 282nd meeting of the Special Committee, that an assurance had been given that the United Kingdom would respect its commitments under the Treaty of Utrecht and that consequently it would never grant the present inhabitants of Gibraltar the rights which they were claiming before the Special Committee and which had not been provided for in the Treaty of Utrecht. On the same occasion, the representative of Spain had recalled that a United Kingdom Minister, Mr. Nigel Fisher, had said in the House of Commons in April 1963 that no constitutional changes were at that time under consideration for the Territory of Gibraltar.

154. He wished to make it quite clear that the United Kingdom Government had never given any assurance of that kind to the Spanish Government and that the words spoken by Mr. Fisher could not be regarded by Spain or by any other interested party as constituting such an assurance. In the United Kingdom's view, the Treaty of Utrecht contained no provisions binding the United Kingdom to refrain from applying the principle of self-determination to the people of Gibraltar. Mr. Fisher had merely been

replying to a question about the constitutional changes then being considered for Gibraltar and had simply been stating the position as it had been at that time. The United Kingdom delegation rejected the attempts made by the Spanish Government to establish that there was a conflict between the exercise of self-determination by the people of Gibraltar and the provisions of the Treaty of Utrecht. The United Kingdom Government had never given contrary assurances to anyone.

155. On 23 September 1964, his delegation had given the Special Committee an assurance that the constitutional changes recently introduced in Gibraltar would in no way damage the interests of Spain or of any other country. It had also said that any constitutional changes which might be worked out between the United Kingdom Government and the representatives of the people of Gibraltar would in no way impede the development of harmonious relations between Gibraltar and Spain. He wished to renew those assurances. The Spanish petitioners and the representative of Spain had described in detail the economic and social interdependence of Gibraltar and its Spanish hinterland, but the existence of such links could not give one party a claim to sovereignty over the other. Such an interpretation of commercial and other links between neighbouring countries would throw the map of the world into complete disorder. However, in view of the many links existing between Gibraltar and Spain, it would be foolish for the people of Gibraltar to adopt as their objective a constitutional status that might arouse justifiable resentment or fear on the part of Spain. The inhabitants of Gibraltar had never done so and he did not think there was any reason to suppose that they ever would. Moreover, the United Kingdom Government had given assurances both privately and publicly to the Government of Spain that developments in the neighbouring territory did not in fact threaten Spanish interests. The representative of Spain in his statement had quoted at length from the memorandum by the Spanish Government dated 6 May 1964, which had been handed to the United Kingdom Ambassador to Madrid. He had also referred to the United Kingdom note of 1 June replying to the memorandum but had omitted to quote the conclusion of that note, in which the United Kingdom Government had stated that without in any way departing from its view that it was under no obligation to consult with Spain on matters concerning Gibraltar, Her Majesty's Government was always willing to discuss ways in which good relations between Spain and Gibraltar could be maintained and any causes of friction eliminated. The United Kingdom Government was still ready to discuss those matters with Spain, with the reservation that it was not prepared to discuss with it the question of sovereignty over Gibraltar.

156. To sum up, the Government of Spain, relying on a 250-year-old treaty, asserted that the granting of any political rights to the people of Gibraltar was in conflict with the provisions of that treaty. Spain had also uttered unmistakable threats against Gibraltar, to be implemented in the event that further constitutional advances should confer a greater degree of self-government on the Territory. And the representative of Spain came before the Special Committee to ask for United Nations endorsement of that position.

157. For its part, the United Kingdom delegation had described in detail to the Special Committee the way

in which Her Majesty's Government was applying and implementing the principle of self-determination and the objectives of General Assembly resolution 1514 (XV) in the case of the people of Gibraltar. It had demonstrated that the granting of a greater degree of self-government to Gibraltar and the recognition of the fact that it was for the people of Gibraltar to decide what their ultimate status should be never had constituted and never would constitute a threat to Spain or any other country.

158. His delegation had already said, and his Government had repeatedly made clear, that the United Kingdom Government fully accepted that the people of Gibraltar should choose the form of their association with the United Kingdom; whenever the elected representatives of the people of Gibraltar wished to advance proposals of this kind, the United Kingdom Government would be ready to study them and work out with the Gibraltarian representatives arrangements for a continuing association acceptable to both parties. Whatever those arrangements were, he was sure that they would be such as to ensure that harmonious relations between Gibraltar and Spain would not be endangered.

159. There was therefore a striking contrast between the attitude of the United Kingdom Government and that of the Spanish Government, which took no account either of the human realities of the present situation in Gibraltar or of the United Nations Charter itself. The Special Committee had repeatedly dedicated itself to the service of colonial peoples everywhere, protecting their interests and assuring their right to decide for themselves how they wished to be governed. His delegation asked the Committee to live up to those high purposes.

160. The representative of Spain, exercising the right of reply, said that the United Kingdom representative, in his statement at the 284th meeting, had attributed to the Spanish delegation arguments and purposes that were not in keeping with the facts.

161. First, Gibraltar had been designated a colony and a Non-Self-Governing Territory not by Spain but by the Government of the United Kingdom, at a time when Spain had not been a Member of the United Nations. Since the start of its activities in the Organization in 1956, Spain had repeatedly made reservations concerning that unilateral decision by the United Kingdom.

162. Secondly, the Spanish delegation's statement could not be interpreted to mean that in the Spanish view self-determination was conditioned on the number of inhabitants of a Territory. In referring to the population of Gibraltar, his delegation had said that it was a prefabricated population intended to serve the interests of the United Kingdom.

163. Thirdly, the Spanish statement had included no threat. His delegation had merely described a United Kingdom stratagem which ran counter to Spanish rights and interests and had outlined the measures by which Spain might, within the strict exercise of its own sovereignty, have to protect those rights and interests.

164. Fourthly, the United Kingdom representative's reference at the 284th meeting of the Committee to his Government's readiness to defend the interests of the people of Gibraltar "in whatever manner might be necessary" was an imperialistic threat typical of the nineteenth century and would in no way deter the Spanish Government from adopting appropriate meas-

ures to restore the balance that had been shattered by a *fait accompli*.

165. Fifthly, in his delegation's view the United Kingdom Government could not decide whether the measures adopted in Gibraltar were or were not damaging to the interests of Spain; only the Spanish authorities could decide that question.

166. Sixthly, his delegation had never asked the Special Committee to endorse the policies that might be adopted by Spain in order to defend its rights and interests; it had, instead, requested the Committee to give no endorsement, even unwittingly, to any colonialist manoeuvre by the United Kingdom.

167. His delegation accorded full respect to the views of others and hoped that its own views, too, would be respected and its statements not distorted. There was nothing in the United Kingdom representative's statement of 30 September 1964 which could lead his delegation to modify its views. He reiterated his delegation's desire to have the situation settled through negotiation between the Spanish and United Kingdom Governments, the paramount interests of the inhabitants being always borne in mind.

168. The representative of Venezuela said that the situation in Gibraltar had not changed since his delegation's clear statement of its position in the Special Committee in 1963 (211th meeting). The Special Committee was discussing the case of Gibraltar as a colony because the administering Power had so designated the Territory. It was clear, however, from the statements made by Sir Joshua Hassan and Mr. Isola, who had appeared in the capacity of petitioners representing the people of Gibraltar, that the case of Gibraltar was not that of a colonial people but that of a territory colonized by a group of settlers who were subjects of the colonizing Power. Moreover, the population was subordinated to the primary interest represented by the Gibraltar military, naval and air base. The major part of the colony's subsistence derived from the base. Furthermore, the population had been and still was selected by the administering Power. The Immigration and Aliens Order of 1885, rigidly enforced by the United Kingdom Government through the Governor of the colony, had been drawn up to prevent the growth of the foreign civilian population inside the fortress area. A person not holding the status of a resident of Gibraltar could not live permanently on the Rock and in fact could not stay there even briefly without a permit. The best proof of the secondary character of the population of the Rock, in comparison with the primary importance of the base, was found in the measures provided for cases of emergency. During the Second World War almost all the population had been evacuated from the fortress. It was not likely that the 16,700 persons concerned had all been old people, women and children; it was more realistic to believe that the evacuation had been carried out in order to ensure better protection of the base.

169. According to Sir Joshua Hassan, the main prerequisites for voting were that a person must be a British subject and must have been a resident of Gibraltar for twelve continuous months before the elections. The Committee could draw its own conclusions from Sir Joshua's statements, especially in view of the fact that residence permits were granted at the discretion of the Governor of Gibraltar, who was appointed by the United Kingdom.

170. His delegation had many doubts with regard to the degree of self-government enjoyed by the people of Gibraltar. Foreign affairs and defence were controlled by the administering Power, which also retained sovereignty over the Territory. No expenditure from the public treasury could be decided upon without the consent of the Governor. The latter could, in addition, secure the enactment of laws necessary for the maintenance of public order or the proper functioning of the Government. Finally, the Governor's consent was necessary for all legislation, which, moreover, was always subject to possible disapproval by the Crown.

171. It was clear, therefore, that the case before the Committee was not that of decolonizing the population of Gibraltar; in fact, a petitioner had appeared before the Committee with the unprecedented request that it should perpetuate and endorse the colonial status. In reply to a question put by the Venezuelan delegation, Sir Joshua Hassan had stated emphatically that no change in sovereignty was being contemplated. The booklet entitled *The Future of Gibraltar* stated that from the economic point of view the colonial status constituted a safeguard which would not be renounced until the guarantees sought were negotiated and incorporated in an article of association with the United Kingdom.

172. On the contrary, the question before the Committee was the decolonization of the Territory in accordance with General Assembly resolution 1514 (XV). The principle of self-determination must not be distorted to legalize a *de facto* situation such as that of Gibraltar. Such legalization by the United Nations, whether tacit or explicit, would set a dangerous precedent. That, indeed, was the view held by the administering Power itself, for in its comments on paragraph 5 of General Assembly resolution 1966 (XVIII) the United Kingdom had stated that "the principle [of self-determination] 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" and had added that "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" (see A/5725/Add.4, pp. 3 and 4).

173. Although his delegation could not fully agree with the arguments put forward in the United Kingdom comments, it would be interesting to note the remark that 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" (A/5725/Add.4, p. 5). Finally, the United Kingdom comment had drawn attention to the danger that, viewed regardless of circumstances, the right of self-determination "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" (*ibid.*).

174. In his delegation's opinion, not only should the principles and provisions of the Charter be applied as parts of an organic whole rather than as abstract concepts, but the Declaration on the Granting of Independence to Colonial Countries and Peoples should itself be applied as a whole and in accordance with the circumstances of each case, within the framework of the

provisions of the Charter. General Assembly resolution 1541 (XV), after referring in principle IV to the idea of geographical separation, had stated in principle V that "once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature".

175. On the basis of the historical, juridical and other arguments that it had already had an opportunity of expounding, the Venezuelan delegation was convinced that the case of Gibraltar was that of a colonial territory and, as such, subject to General Assembly resolution 1514 (XV). The case should be considered, more particularly, under operative paragraph 6 of that resolution and in accordance with the principles of the Charter, especially the principle of respect for the territorial integrity of Member States. His delegation had explained in detail the scope, content and interpretation of paragraph 6 and the circumstances in which it had been approved by the General Assembly, both in its statement on Gibraltar in the Special Committee on 11 September 1963 (211th meeting) and in its most recent statement on the Malvinas Islands in Sub-Committee III (29th meeting), to which texts he referred members of the Committee.

176. Article X of the Treaty of Utrecht had transferred only the military base of Gibraltar to the administering Power. Prior to the existence of the United Nations, situations created by such treaties had been settled by agreement between the parties. There was nothing to prevent the conclusion of such agreements, in the interests of good international relations and of justice, between two Member States which maintained cordial relations. On the other hand, it seemed natural that the residents of the fortress of Gibraltar should defend their position and prefer to remain under the protection of the administering Power. That, however, did not alter the nature of the problem. The principle of self-determination could not be distorted to support a *de facto* situation which ignored the fundamental principle of respect for the territorial integrity of a State. The only form of decolonization that could be applied to colonial territories that had been wrested from other States was reintegration into the State from which they had been taken. The General Assembly had already sounded a warning on the subject in resolution 1654 (XVI), in whose sixth preambular paragraph the Assembly had expressed its concern that "contrary to the provisions of paragraph 6 of the Declaration, acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonization".

177. To sum up, the case of Gibraltar was a colonial matter which, by definition, lay within the competence of the Special Committee and was subject to General Assembly resolution 1514 (XV). Secondly, certain characteristics required its consideration as one of the special cases envisaged in operative paragraph 6 of that resolution. Thirdly, the problem was that of a colonized territory, not of a colonized or colonial population. The Committee could not disregard the interests of the population of the Territory but it should assess them at their true value. Fourthly, besides the colonial problem there was a dispute regarding sovereignty and based on historical and juridical arguments; the Committee could not ignore those elements of the problem. His delegation agreed with the United Kingdom

representative that the Committee was not a tribunal competent to consider the juridical basis of a dispute or settle differences between two Member States. If, however, it was impossible to find a satisfactory solution of a colonial problem precisely because such a dispute existed, the Committee could recommend in accordance with the principles of the Charter—in particular the principles contained in Article 2, paragraphs 3 and 4—that a solution of the problem should be sought.

178. He was convinced that the Committee would be acting realistically if it invited the United Kingdom and Spanish Governments to enter into negotiations towards a just solution of the problem, in accordance with the principles of the Charter and those of General Assembly resolution 1514 (XV); he had no doubt that those two friendly Governments would be responsive to such an invitation.

179. The representative of Mali said that, in spite of the complexity of the question, it was clear to her delegation that the case of Gibraltar was that of a colonial territory forcibly occupied 250 years earlier by the United Kingdom. It was evident that the United Kingdom was interested primarily in establishing a military base to support its strategic policy; it had made Gibraltar part of a world-wide network of bases designed to protect its trade routes, its empire and other political interests. Despite the idyllic picture given of the prosperity of Gibraltar, it must be recognized that the Territory had no resources and lived at the expense of the Spanish economy, which represented a constant danger to Spain's economic policy and an obstacle to its development.

180. Two hundred and fifty years of domination did not create any right of possession. The United Kingdom, in her view, was interested not so much in the welfare of the people of Gibraltar as in maintaining a military base. Her delegation opposed the maintenance of military bases anywhere, and the more so when they violated the sovereignty and territorial integrity of a country.

181. Under the terms of reference, as defined in General Assembly resolutions 1654 (XVI) of 27 November 1961, and 1810 (XVII) of 17 December 1962, the Special Committee should seek the most suitable ways and means for the speedy and total application of the Declaration in General Assembly resolution 1514 (XV), with no exceptions or limitations. While it had heretofore concerned itself with the speedy transfer of power to the peoples of dependent Territories with a view to their complete independence, a matter dealt with more particularly in the first five operative paragraphs of resolution 1514 (XV), it went without saying that operative paragraphs 6 and 7 could be invoked equally well if the case required it.

182. She hoped that the United Kingdom would realize that the best way to safeguard the interests of the people of Gibraltar was to negotiate with Spain. Her delegation would support any draft resolution recommending negotiations between the United Kingdom and Spain with a view to a solution which would respect Spain's territorial sovereignty and at the same time protect the interests of the people of Gibraltar.

183. The representative of the Union of Soviet Socialist Republics said that, since its seizure of Gibraltar 260 years earlier, the United Kingdom had been using that Territory for the purposes of its predatory colonial policy in Africa and the Near and Far

East. For decades, Gibraltar had been subject to colonial rule, and despite some constitutional reforms introduced recently by the British authorities, there had been no essential changes in that system. Legislative power in Gibraltar remained in the hands of a Governor appointed in London, while the function of the territory's Legislative and Executive Councils was essentially that of executing the will of the colonial authorities. It was apparent from the brochure *The Future of Gibraltar*, published in 1964 by the Legislative Council, and from the statements made by the petitioners who had appeared before the Committee that the Council favoured the maintenance of the *status quo* or, if that was not possible, "association" with the United Kingdom. That position was fully in keeping with the interests of the United Kingdom colonialist circles, which sought to retain possession of Gibraltar as an important military base directed against the independent States and liberation movements of Africa and the Near and Middle East. At the same time, Gibraltar was no longer merely a United Kingdom base but had become a bastion of the aggressive NATO bloc. In addition, Gibraltar was to become a base for the NATO multilateral force. It had been reported on 13 February 1963 in the newspaper *Daily Mail* that the United States was considering the establishment in Gibraltar of a base for its Polaris missile-firing submarines. Along with the military bases in Malta and Cyprus, in Aden and Singapore, in Simonstown and elsewhere, scattered all over the world, the Gibraltar base represented a direct threat to the national liberation movements of Asia and Africa.

184. It was difficult, in the light of well-known facts, to take seriously the statement by the Spanish representative that Gibraltar posed a threat to Spain's security. First of all, Spain was itself a colonial Power whose military bases in Africa, and in particular in Morocco, were as great a threat as Gibraltar to the peace and security of Africa. Secondly, although its representatives complained of the presence of a foreign military base in its territory, Spain was prepared to see Gibraltar transformed into a joint Spanish-United Kingdom base. That had been suggested in an article published in the Spanish newspaper *Ya* on 19 February 1963 and had been confirmed recently by a high-ranking Spanish official, who, according to *The New York Times* of 17 July 1964, had stated that a "formula" could be found for Spanish-United Kingdom coexistence in Gibraltar along the lines of the existing arrangement at the United States military base in Rota. The Spanish Government would be willing to see the military base maintained in Gibraltar provided that the Spanish and not the United Kingdom flag flew over the Territory, or, in the worst case, both flags. The willingness of the Franco Government, as of certain other countries in the region which had associated themselves with the NATO policy, to open wide the gates of Gibraltar to allow a stream of nuclear weapons to flow into the Mediterranean was evidence that it was prepared not only to risk the fate of its own people, but to endanger the security of neighbouring countries. Nuclear weapons, which the member countries of NATO intended to introduce into the area, were least suited for defence, but best suited for purposes of provocation.

185. The liquidation of the military base in Gibraltar and the complete demilitarization of the Territory were urgently necessary. The transformation of Gibraltar into a demilitarized zone and the liquidation of the

military base in Gibraltar would be an important step towards the elimination of that bastion of colonialism and of a dangerous centre of colonialist provocation against the peoples of Africa.

186. The representative of the Ivory Coast said that the question of Gibraltar was clearly a colonial one and therefore properly before the Committee. Although the treaty governing the status of Gibraltar might at one time have constituted the basic framework within which the problem must be viewed, it was the interests of the people of Gibraltar which must now receive primary consideration in the effort to find a solution in conformity with the Charter. It was apparent from the statement made by Sir Joshua Hassan in the Committee that the people of Gibraltar sought the economic and social progress and development referred to in Article 55 of the Charter. Hence the way was clearly marked out for the implementation of General Assembly resolution 1514 (XV). Reference should also be made to Article 73 of the Charter, and especially to the obligation to further international peace and security which it imposed on administering Powers. Since the problem of Gibraltar did not yet appear to have been clarified sufficiently for the Committee to take a position, he suggested that its further consideration should be postponed until later meetings, so that the Committee could obtain as much additional information as possible. He also urged the two principal parties, the United Kingdom and Spain, to undertake negotiations in accordance with Article 33 of the Charter with a view to arriving at a solution in the interests of the people of Gibraltar and of peace.

187. The representative of Tunisia said that Tunisia's views on the question of Gibraltar, which had been given in detail the previous year, remained unchanged (A/5446/Rev.1, chap. XII, paras. 76-80). It was argued that the Special Committee was not competent to deal with the problem of Gibraltar, either because the latter was not a colonial territory, despite the fact that Article 73 of the Charter applied to it, or because a territorial dispute between two Member States was involved. In the opinion of his delegation, the dispute had originated in the military conquest of the Territory by the British and its transformation into a colony; that amputation of a piece of Spanish territory had subsequently been the subject of a treaty which had served only as a cover for the invasion and did not in any way justify British possession of the Territory. The colonial character of Gibraltar was undeniable, and the Special Committee's competence could not be challenged.

188. Prior to the British occupation, Gibraltar had been a Spanish city. After driving out the original inhabitants, the occupying Power had brought in a heterogeneous population from every part of the world. The so-called Gibraltarian nationality had never existed, and the Territory's present population, which had settled there as the result of a colonial occupation and was obviously motivated by selfish feelings, could not be regarded as a colonial people. To claim that it had an historical continuity going back 250 years meant denying historical facts and the numerous statements which had been made before the Committee.

189. The concept of prescriptive rights had also been invoked, but that concept was not recognized in international law, and he found it difficult to see how the Committee could endorse it without betraying the hopes of colonial peoples and introducing into international relations a new principle which would create



endless conflict in the world. As for the principle of self-determination, however essential it might be, it could not be applied to an enclave inhabited by an imported population whose interests were linked with those of the occupying Power. The unique interpretation given that principle by the United Kingdom delegation was contradicted by historical, geographic, cultural and economic realities and, far from promoting the peaceful settlement of disputes, constituted a serious obstacle to the maintenance of world peace.

190. In conclusion, his delegation saw no alternative to the solution which it had advocated in its statement in September 1963, i.e., the opening of negotiations between Spain and the United Kingdom with a view to the application of paragraph 6 of resolution 1514 (XV). The Special Committee should recommend such negotiations and do its utmost to overcome the hesitations of the reluctant parties. That solution would put an end to a colonial situation on Spanish territory while at the same time safeguarding the interests of the present population of Gibraltar. Furthermore, the return of Gibraltar to Spain would make it possible to eliminate the military base situated in that Territory, which posed a serious threat to the peoples of Africa and Asia.

191. The representative of Chile said that the question of Gibraltar was not a simple case of decolonization but a more complex problem than those with which the Committee normally dealt. It was therefore of the utmost importance that the Committee's jurisdiction should be carefully defined, particularly with regard to dependent territories which were the subject of territorial claims or claims of sovereignty. He agreed with the United Kingdom representative that the Committee's terms of reference gave it no authority to consider claims of that nature. He also shared the view of the Spanish representative, who had stated that it was not his purpose to initiate a discussion of legal rights but to put an end to a form of colonialism. The Special Committee was competent to deal with Gibraltar only because the latter had been held to be a colony or Non-Self-Governing Territory.

192. Although Gibraltar was certainly covered by General Assembly resolution 1514 (XV), it was not easy to apply the latter's provisions to it without encountering differing criteria. It therefore seemed wiser, in such a special case, to seek other means of achieving the desired end in accordance with resolution 1810 (XVII), which permitted the Committee "to seek the most suitable ways and means for the speedy and total application of the Declaration to all territories which have not yet attained independence". One means might be co-operative action by the United Kingdom and Spain. Those two Powers, which were traditionally friendly, were in the best position to consider positive action to bring about decolonization in a manner advantageous to all concerned, including, of course, the inhabitants of Gibraltar, and for the benefit of the international community as a whole.

193. His delegation would therefore be prepared to support a draft resolution which would simply point out the desirability of direct contact between the United Kingdom and Spain, so that those two countries could determine the most appropriate means for the decolonization of Gibraltar.

194. The representative of Iraq said that Gibraltar was well known to his delegation as a military base used to protect the United Kingdom's communications

with the Orient and to perpetuate its rule over its colonial possessions. Those two purposes were no longer valid, but Gibraltar remained a colony, even though certain political changes were taking place; as such, it was a proper subject for consideration by the Committee, which should make suitable recommendations. He wished to emphasize in that connexion that resolution 1514 (XV) was an indissoluble whole, all of whose provisions were of equal importance. Moreover, the resolution did not exclude consideration of any of the historical and legal factors mentioned by the Spanish representative and other speakers. It must also be recognized that the problem was complicated by various factors which should be taken into consideration, including the interests of the inhabitants of Gibraltar and of the other parties concerned. In any case, threats would not hasten the solution of a problem of such complexity. His delegation therefore felt that the question of Gibraltar could be settled only by means of direct negotiations between the United Kingdom and Spain in an atmosphere of good will and trust, and it appealed to those two Powers to initiate such negotiations as soon as possible.

195. The representative of Australia said that nothing he had heard during the present debate inclined him to change the substance of what he had previously said on the question of Gibraltar. He would therefore reiterate his view that it was essential for the Committee to realize, in dealing with the problem of colonialism, that the various colonial territories differed in their physical conditions, in their historical background, in the nature of their populations, in the problems they faced and in the ways in which they dealt with those problems.

196. With regard to Gibraltar, Sir Joshua Hassan and Mr. Isola, speaking the previous year on behalf of the inhabitants of the Territory, had stated clearly that Gibraltar was not suffering exploitation or subjugation by the administering Power, that the political situation there was stable and that the Territory had a system of progressive, representative government characterized by continuing consultation between the people and the administering Power. The same two petitioners had appeared before the Committee at the current session as the newly and freely elected spokesmen for their people, as the result of elections held less than a month earlier. Both had reaffirmed the aspirations voiced through them the previous year by the people of Gibraltar and had reported further political advancement in the Territory. The Mayor of San Roque and his colleagues, on the other hand, had not appeared to be, like Sir Joshua and Mr. Isola, the elected and authorized representatives of a clearly defined group of people. The erudite presentations of the legal factors involved had merely confirmed his belief that the Committee was neither competent nor able, for the present at least, to pass on such matters.

197. The Spanish representative had asserted that the United Kingdom had conquered Gibraltar "by force". That conquest, however, had been merely one episode in a general struggle in which most of the countries of Europe had been involved. Moreover, the Moors, who had occupied Gibraltar for some 600 years, had been ejected "by force". The world of the past was one of shadows overlaid by shadows, none of which could be clearly seen. In any event, the past had left Gibraltar with some 17,000 or 24,000 inhabitants whom the Committee could not ignore. Whether or not they constituted a "prefabricated population"—and

he did not believe that they did—they existed as a people and it was no more possible to deny their existence than to deny that of the people of Singapore, for example, or of many other populations which had come into being much later and yet had not been denied the right of self-determination. As a people, the Gibraltarians had expressed their will and would continue to do so; surely they could not be disposed of against their will. As a people, the Gibraltarians had a special claim on the Committee's attention under the provisions of resolution 1514 (XV).

198. It was with the people that the Committee should concern itself and not with the conflicting claims of the United Kingdom and Spain, which should be adjusted between those two Powers without the Committee's intervention. The Australian delegation did not feel that the course which the Gibraltarians had chosen must necessarily threaten good relations between the United Kingdom and Spain. Nor did it feel, in view of the stage of political, economic and social development attained by the people of Gibraltar, that the Committee needed to give much further consideration to their problems.

199. In conclusion, the representative of Australia wished to point out that the Committee's voice was being heard by colonial peoples throughout the world, and especially by the people of Gibraltar. If that voice was raised against the fundamental principles of self-determination and the freely expressed will of the people, as they were enunciated in resolution 1514 (XV) and should be enunciated with regard to Gibraltar, the Committee might compromise its own efforts to achieve the goals it had set for itself.

200. The representative of Syria said that his delegation had no intention of dealing with interpretations of the Treaty of Utrecht or analysing the juridical aspect of the question of Gibraltar, since the Committee's task was a political rather than a juridical one.

201. The question of Gibraltar was a colonial question of the first order and the Committee had been entrusted with the task of implementing the Declaration on the Granting of Independence to Colonial Countries and Peoples, wherever they were and wherever they might be. Gibraltar had for a long time been a British colony and more recently had become a Non-Self-Governing Territory. It was outside the metropolitan area of the United Kingdom and it therefore fell within the purview of resolution 1514 (XV); it was consequently a matter of liberating it from foreign domination, i.e., from the United Kingdom.

202. The Syrian delegation considered that Gibraltar was part of Spain and that it should be returned to the Spanish people. It was true that the question was complex, but it could be settled by negotiation. The unity of the territories of a country was a sacred principle; no argument of expediency, no consideration derived from the outmoded European balance of power could justify the retention of Gibraltar as a military base for the United Kingdom. Furthermore, the strategic position of Gibraltar could not deprive Spain of its enjoyment of full sovereignty over that territory. The presence of the base constituted a constant peril, not only to the territorial safety of Spain and other Mediterranean countries but also to the economic development of Spain. As for the alleged free association between the people of Gibraltar and the United Kingdom, that was merely a pretext for perpetuating the *status quo*. The Syrian Government was against all military bases because it considered them a constant

menace to world peace, stability and development. It must be understood that Spain would never make of Gibraltar a new military base or place the Rock at the service of any political bloc. The Straits of Gibraltar must remain a free water-way for all nations of the world.

203. The solution to the problem of Gibraltar lay in immediate negotiations, bearing in mind the interests of the population. The United Kingdom, which had liquidated an entire colonial empire, would surely be able to find a solution to that problem. His delegation thought that the resolution which the Committee eventually adopted should embody the idea of negotiations based on the principle that Gibraltar was a Spanish territory. If no draft resolution along those lines was forthcoming, his delegation was prepared to submit one.

#### D. ACTION TAKEN BY THE SPECIAL COMMITTEE

204. At the 291st meeting, the Chairman stated the consensus of the Special Committee, as reflected in the general debate on Gibraltar. He stated that in this consensus it was not to be expected that every delegation would find its own views reflected in the text. The consensus was the general opinion that could be deduced from the summation of all the statements that had been made during the debate on the general question of Gibraltar.

205. The statement of consensus by the Chairman was accepted by the Special Committee as expressing its general feeling on the question of Gibraltar.

206. After the adoption of the consensus, the representative of the United Kingdom stated that he regretted that he had been unable to attract the Chairman's attention in order to speak before the consensus on Gibraltar had been adopted. His delegation did in fact wish to put forward an objection, because it considered that there could not be a dispute in the Committee about the "status" of Gibraltar. It did not think that the status of Gibraltar had been the subject of the debate. Even if it had been, the United Kingdom delegation would adhere to the opinion which it had expressed in both 1963 and 1964 that the Committee was not competent to consider such a dispute. Its terms of reference, in fact, did not authorize it to consider or to discuss any dispute about sovereignty or territorial claims, still less to make recommendations on such a dispute. His delegation was in complete agreement with the view expressed by the Chilean representative on 6 October 1964 (see paragraphs 191-192 above) that the Committee was not empowered to consider such disputes. His Government would therefore not feel itself bound by the terms of any recommendation by the Committee touching on questions of sovereignty or territorial claims.

207. On the question of the future of Gibraltar, the United Kingdom Government would be guided, as the Charter of the United Nations required, by the paramount interests of the inhabitants of Gibraltar. Its policy would continue to conform with the principle of self-determination. It did not accept that there was any conflict between the provisions of the Treaty of Utrecht and the application of the principle of self-determination to the people of Gibraltar.

208. Finally, as his Government had informed the Spanish Government in its note of 1 June 1964, and as his delegation had stated in the Committee on

## **ANNEX 115**

General Assembly Sixth Committee Debates on the aspects of the Friendly Relations Declaration 1966-1968: UN Doc. A/AC.125/SR.91 (23 September 1968); UN Doc. A/AC.125/SR.68 (4 December 1967); UN Doc. A/AC.125/SR.44 (27 July 27, 1966)

Issued Oct. 21, 1968

SUMMARY RECORD OF THE NINETY-FIRST MEETING

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

Chairman:

Mr. RIIPHAGEN

(Netherlands)

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

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

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

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

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(Mr. Engo. Cameroon)

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

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

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

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

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(Mr. Engo, Cameroon)

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

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

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

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

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

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

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

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

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

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(Mr. Kestler, Guatemala)

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

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

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

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

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

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

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

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(Mr. Cristescu, Romania)

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

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

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

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

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(Mr. Cristescu, Romania)

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

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

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

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

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(Mr. Shitta-Bey, Nigeria)

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

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

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

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

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

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(Mr. Shitta-Bey, Nigeria)

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

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

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

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

The principle of equal rights and self-determination of peoples was the basis of "friendly relations among nations", the development of which was one of the purposes of the United Nations. Since the Second World War, general acceptance had been given to the theory of Quincy Wright that: "The interpretation and application of a State's international obligations are never within its domestic jurisdiction... To hold that international law has to give way to independence constitutes 'an anarchic interpretation' of domestic jurisdiction which would be a 'negation of any legal system'." The legal obligations of Members of the United Nations with respect to the self-determination of peoples within their territory prevented them from pleading domestic jurisdiction as grounds for opposing examination of a question involving the principle of self-determination by United Nations organs. Furthermore, in resolution 2326 (XXII), the General Assembly reiterated its declaration that the practice of all forms of racial discrimination "constituted a crime against humanity", presumably using the phrase in the same sense as was given it in the Nürnberg Principles (A/1516) as formulated by the International Law Commission.

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(Mr. Van Lare, Ghana)

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

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

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(Mr. Van Lare, Ghana)

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

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

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

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(Mr. Van Lare, Ghana)

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

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

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

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

The meeting rose at 12.20 p.m.

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UNITED NATIONS

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ASSEMBLY



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1967 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING  
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SUMMARY RECORD OF THE SIXTY-EIGHTH MEETING

held at the Palais des Nations, Geneva,  
on Thursday, 3 August 1967, at 10.30 a.m.

CONTENTS:

Consideration, pursuant to General Assembly resolution 2181 (XXI) of 12 December 1966, of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (agenda item 6)

- A. Consideration, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, of the four principles listed below with a view to completing their formulation:

...

- (c) The principle of equal rights and self-determination of peoples (continued)

PRESENT:

<u>Chairman:</u>	Mr. ENGO	(Cameroon)
<u>Rapporteur:</u>	Mr. SAHOVIĆ	Yugoslavia
<u>Members:</u>	Mr. ABDELAZIZ	Algeria
	Mr. DELPECH	Argentina
	Sir Kenneth BAILEY	Australia
	U MAUNG MAUNG	Burma
	Mr. HAPPY-TCHANKOU	Cameroon
	Mr. MILLER	Canada
	Mr. VARGAS	Chile
	Mr. MYSLIL ) Mr. PECHOTA)	Czechoslovakia
	Mr. VIRALLY	France
	Mr. Van LARE	Ghana
	Mr. DUPONT-WILLEMEN	Guatemala
	Mr. KRISHNAN	India
	Mr. ARANGIO-RUIZ	Italy
	Mr. HATANO	Japan
	Mr. MWENDWA	Kenya
	Mr. ANDRIAMISEZA	Madagascar
	Mr. GONZALEZ GALVEZ	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. SHITTA-BEY	Nigeria
	Mr. ZDROJOWY	Poland
	Mr. MARASESCU	Romania
	Mr. LEVIN	Sweden
	Mr. NACHABE	Syria
	Mr. CHKHIKVADZE	Union of Soviet Socialist Republics
	Mr. SHAKER	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. REIS	United States of America
	Mr. MOLINA LANDAETA	Venezuela
<u>Secretariat:</u>	Mr. WATTLES	Secretary of the Committee

CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2181 (XXI) OF 12 DECEMBER 1966, OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS (agenda item 6)

- A. CONSIDERATION, IN THE LIGHT OF THE DEBATE WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE SEVENTEENTH, EIGHTEENTH, TWENTIETH AND TWENTY-FIRST SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964 AND 1966 SPECIAL COMMITTEES, OF THE FOUR PRINCIPLES LISTED BELOW WITH A VIEW TO COMPLETING THEIR FORMULATION:

- ...  
(c) THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES (A/AC.125/L.40 and Corr.1, A/AC.125/L.44, A/AC.125/L.48)  
(continued)

Mr. REIS (United States of America) said that his delegation realized how important each of the principles before the Committee was, not only in itself, but also in relation to the other principles. The principle of equal rights and self-determination of peoples was of particular importance since respect for it was indispensable for the existence of a community of nations in which the other principles could be respected. It was not surprising, therefore, that among the purposes of the United Nations set forth in Article 1 of the Charter, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples was second only to the maintenance of international peace and security. He was stressing the importance the United States Government attached to the principle, because it was one which was deeply embedded in the historical, philosophical and political heritage of his country. It was the cornerstone of the Declaration of Independence of 1776, which had probably had more influence than any other document on the nation's thinking about the proper relations between free men and their Government. At the end of the First World War, there had been no greater champion of the right of all peoples to self-determination than Woodrow Wilson, the then President of the United States of America, to whose efforts in behalf of that principle a number of European States partly owed their existence.

At the present juncture of world history, it was no exaggeration to say that the principle was no longer a mere moral or political postulate; it was, rather, a settled principle of modern international law. His delegation considered that the goal of the Committee should be to formulate a comprehensive and meaningful statement of the principle which would attempt to come to grips with all its different aspects. In particular, it believed that the Committee should seek to give content to the principle by express reference to situations where the principle was applicable, such as colonies

or other Non-Self-Governing Territories under Chapter XI of the Charter, or Trust Territories under Chapter XII. The Committee should seek to prescribe the legal conditions and consequences of the principle and not limit itself merely to reiterating its existence in a manner which shed little light on its content.

At the Committee's 1966 session, the United States delegation had submitted a comprehensive proposal on the principle (A/AC.125/L.32), which sought to deal with self-determination in all its various contexts. The approach taken in its proposal reflected that of the General Assembly in resolution 1541 (XV). In the spirit of that resolution, the United States delegation had proposed that with respect to Non-Self-Governing Territories, the principle could be satisfied by the achievement of self-government by the free choice of the people concerned, and that the achievement of self-government might take one of the following forms: emergence as a sovereign and independent State, free association with an independent State, or integration with an independent State. The United States proposal was fully consistent with the Charter. It also sought to avoid an inflexible conceptual framework which failed to take account of practical situations concerning the exercise of self-determination. For example, Non-Self-Governing Territories varied greatly in resources, size and population; the peoples of some Territories might wish full independence, whereas the peoples of other Territories might not wish to assume the full responsibilities of independent statehood, preferring to maintain an association with another country. If - and that word should be stressed - the people of a Non-Self-Governing Territory exercised its right of self-determination freely and in accordance with the Charter and chose a political status other than full independence, it was surely not open to outsiders to insist that it be forced to assume independent statehood against its wishes.

The United States proposal also reflected the important link which existed between the principle and representative government. The question might arise of whether the principle of equal rights and self-determination was satisfied if a State denied to certain peoples within its territory effective representative government. The United States proposal was designed to reflect the element of representative government in the spirit of article 21 of the Universal Declaration of Human Rights. His Government still believed that its 1966 proposal offered a balanced formulation of the principle of equal rights and self-determination of peoples.

The United States delegation still had great difficulties with the other proposals submitted at the 1966 session. It considered that the proposal submitted by Czechoslovakia (A/AC.125/L.16) would seriously distort the Charter principle on equal

rights and self-determination of peoples and would, in effect, violate certain provisions of the Charter. Self-determination under the Charter was not limited to colonial situations or problems of racial discrimination. When Article 1 (2) of the Charter spoke of "peoples", it meant all peoples wherever they might be and regardless of their colour. To limit the Charter principle to colonial situations and racial problems would be short-sighted from a historical point of view and contrary to the Charter. While his delegation recognized that the application of self-determination in the context of decolonization had been one of the key factors in the development of the international community since World War II, it did not consider that the Charter was limited to that context.

The text submitted by Czechoslovakia also contained a provision designed to sanction wars of liberation under the guise of the Charter principle of equal rights and self-determination of peoples and to prohibit any armed action or repressive measures of any kind against peoples under colonial rule. Such provisions were not compatible with the principle under consideration. The notion of liberation by any means was not compatible with the Charter principles of non-intervention and the threat or use of force. The effort to outlaw armed action of any kind against dependent peoples would raise almost insuperable practical difficulties. For one thing, it failed to recognize that respect for law and order in Non-Self-Governing Territories was indispensable to the development of those Territories politically, economically, socially and culturally, and to the speedy exercise in peaceful conditions of the right of self-determination. Of course, when peoples of Non-Self-Governing Territories were forced to endure alien subjugation, domination and exploitation, they were being denied fundamental human rights in violation of the Charter. However, to seek to sanction wars of liberation and to prohibit any armed action in dependent areas was to make the unwarranted and unacceptable assumption that all States administering Non-Self-Governing Territories were subjecting the peoples of those Territories to subjugation, domination and exploitation. His Government refused to draw such a conclusion in respect of its administration of the Non-Self-Governing Territories under its jurisdiction, including the Trust Territory of the Pacific Islands. Such a conclusion amounted to a repudiation of Chapters XI and XII of the Charter, which expressly recognized the relationship in question. There was, moreover, a tendency in the East-West context to label any action against a Government that was not liked as a war of liberation. The idea of trying to get rid of a Government in that way was intolerable to the United States Government.

The proposal put forward by the non-aligned countries at the present session (A/AC.125/L.48) was almost identical to that submitted at the 1966 session by thirteen members of the Committee (A/AC.125/L.31 and Add.1-3). While it contained positive elements which merited serious consideration, it also contained, like the Czechoslovak proposal, elements which distorted the Charter principle of equal rights and self-determination of peoples and which ran counter to other provisions in the Charter. More generally, it failed to come to grips with the basic problem confronting the Committee, namely to produce a meaningful statement on the principle's application. As with the Czechoslovak proposal, self-determination appeared to be considered almost exclusively in an anti-colonial context. It was worth repeating that colonialism constituted only one aspect of the problem. His delegation intended to study the proposal further, but some of its initial reactions might be worth mentioning at the present juncture. In paragraph 2 (b) of the relevant part, the formulation of a right of self-defence in the context of equal rights and self-determination coupled with a right to "receive assistance from other States" appeared to be an open invitation for the illegal use of force and for intervention in the affairs of other States. Paragraph 2 (c) sought to formulate a duty to refrain from any action against the national unity and territorial integrity of another country. That objective was acceptable, but he wondered whether it might not be more appropriate to include that kind of provision in the text relating to the principle of non-intervention. His delegation also had problems with paragraph 2 (d). The notion that the United Nations had a responsibility "to bring about an immediate end to colonialism ... etc." ignored Chapters XI and XII of the Charter or, at least, cast doubts on their respectability. Those Chapters were, however, necessarily consistent with the principle of equal rights and self-determination of peoples.

The new proposal submitted by the United Kingdom delegation (A/AC.125/L.44) was, in some respects, patterned on the text submitted by the United States delegation in 1966. It also took into account certain aspects of the thirteen-power proposal submitted in 1966 and contained certain provisions not reflected in previous proposals. His delegation was particularly pleased to see the inclusion of two new ideas which had not been adequately reflected in earlier proposals. The first was the reference, in paragraphs 1 and 2 (a) of part VI, to human rights in the context of equal rights and self-determination of peoples. The Committee would, indeed, be remiss if it failed to take account of the inseparable relationship between respect for the principle of equal

rights and self-determination and respect for human rights. The connexion between the two concepts was explicit in Article 55 of the Charter. The second new idea was reflected in the inclusion of a reference in paragraph 2 (b) to social, economic and cultural development as well as political development. Political, economic, social and educational advancement of the peoples of Non-Self-Governing Territories and of Trust Territories were given equal emphasis in Articles 73 a and 76 b of the Charter.

Since the Drafting Committee would be studying all the proposals on the principle in depth, he had merely set forth some basic considerations which his delegation felt should be taken into account. It would comment in greater detail at the appropriate time. He reaffirmed the desire of his delegation to do its utmost to reach a consensus text on the principle.

U MAUNG MAUNG (Burma) said that his delegation considered that the principle under consideration was one of the foundation stones upon which the United Nations was built. The principle was implicit in the second paragraph of the Charter's Preamble and was set forth explicitly in Article 1 (2) as a basis for the development of friendly relations among nations. Moreover, Chapters XI, XII and XIII laid down the guidelines, as well as the procedures, to be followed in implementing the principle with a view to restoring to peoples still subject to colonial domination their inalienable right to independence and sovereignty. Many General Assembly resolutions such as resolutions 648 (VII) and 742 (VIII), and the more recent ones, such as resolutions 1514 (XV) and 2105 (XX), were also pertinent.

Past discussions in the Special Committee and in the Sixth Committee of the General Assembly had amply shown that there was general agreement among Member States on the basic postulates of the principle as well as on the purpose behind the Committee's efforts to give it a juridical formulation. Differences of opinion had apparently arisen in the past largely because attempts were made to widen its scope so as to make it applicable to certain situations which were of doubtful relevance to the aims of the principle.

It might be said that a certain phase in the development of international relations had been reached where attempts were being made to maintain peace and friendly relations among nations by, amongst other means, codifying some of the basic and timeless principles of international law. It was a matter of vital importance that members of the Committee should be absolutely clear in their minds as to what the indisputably self-evident constituents of the principle were, what precision of language should be used in

defining its constituents and limiting its meaning and scope. In other words, the Committee should determine which type of situation and in respect of which category of peoples the principle could justifiably be applied.

All those questions had already been fairly satisfactorily examined at previous sessions. A vast reservoir of conceptual and empirical guidelines was to be found in the Charter and in the pertinent resolutions of the General Assembly. The sum total of the experience gained by the United Nations in the implementation of the principle had clearly and incontrovertibly established its meaning and its purpose, namely that it was relevant only to colonialism and was to be specifically applied in the promotion of the independence of peoples under colonial domination.

The Committee would do well to avoid formulating a text which might be construed as widening the meaning and scope of the principle to include peoples who had already constituted a sovereign State. To understand it as covering peoples who constituted a sovereign State would have the effect of re-writing history to suit a political concept, and the disruptive consequences would perhaps be felt more intensely in Europe than elsewhere. Indeed, the viability of modern European States might become questionable. Moreover, the essential premise of the seven principles of friendly relations and co-operation among nations would be seriously undermined. If the principle were given a wide meaning and applicability, situations might arise in which a State, in maintaining friendly relations with another State, conducted itself in a manner which was tantamount to giving a limited recognition to the latter's sovereignty. There would also arise many other similar complications that would weaken the principles of sovereign equality of States and of non-intervention in affairs within the domestic jurisdiction of other States.

His delegation had difficulty in understanding the purpose and meaning of the United Kingdom proposal relating to the principle (A/AC.125/L.44, part VI). Since the United Kingdom draft declaration attempted to be comprehensive and was derived in part from earlier agreed texts and areas of agreement, it contained many commendable formulations. To the extent that it also reflected the special views of the United Kingdom delegation, however, it was natural that it should contain some formulations which were difficult for many other delegations to accept. While his delegation respected the views of other delegations and also the sense of responsibility with which they presented them, it felt obliged to say that in its view, the concept embodied in part VI, paragraph 4 of the United Kingdom draft appeared to be incompatible with the



real purposes of the principle. While the United Kingdom formulation in paragraph 2 (c) would prohibit States from taking action directed towards the "disruption of the national unity and the territorial integrity of another State", that appeared to be invalidated by the qualifications set forth in paragraph 4. In setting forth the concepts included in that paragraph, the sponsor appeared to be making a mild attempt to impose certain of its own political persuasions on the constitutional law and practice of other States.

He did not wish to dwell on the problems connected with national minorities, regional autonomy, secessionist, separatist or irredentist ambitions, traditional rivalries in a plural society, inequality of rights and opportunities between different communities within a society irrespective of what was laid down by the law and the constitution, uneven economic and social progress between different regions or communities within a State; or the consequences of the legacy of deliberate divisive policies of the former colonial Power. It was sufficient to say that such situations were apt to be experienced by all sovereign States at one time or another. Even when such troubles brought violence, as they sometimes did, no one should make the grave mistake of righteously assuming that they represented legitimate movements of liberation of peoples within an unjust State.

All those matters had been gone over many times before, and he hoped that the knowledge thus gained would give the members of the present Committee the wisdom and foresight necessary to distinguish clearly between what should rightly and properly be the components of the principle of equal rights and self-determination of peoples and what should be excluded from it.

Mr. KRISHNAN (India) said that the emancipation of colonial peoples - a process which had gone a long way but which was still not completed - had brought about a remarkable change in the international community and hence in the very content of international law and relations. Formerly, a very small group of European powers had arrogated to themselves the power to determine the law, and peoples with colonial status were the objects rather than the subjects of the accepted law. With the adoption of the United Nations Charter, however, there had been a complete transformation in the international situation: might was no longer necessarily considered to be right and the exclusive circle of the Concert of Europe had given way to a cosmopolitan club whose membership was open to all.

It was a striking reality of the contemporary world that colonialism was recognized as repugnant to the human conscience and as politically and legally untenable. As

pointed out by Judge Moreno Quintana in his separate opinion in the Judgement of 12 April 1960 on the Right of Passage over Indian Territory Case:

"International law must adapt itself to political necessities .... that is the reason why the Charter made legal provision to cover the independence of Non-Self-Governing Territories."<sup>1/</sup>

The untenable character of sovereign claims by the colonial powers over their colonial territories was clearly demonstrated by the provisions of Chapters XI and XIII of the Charter. It was also confirmed by numerous General Assembly resolutions, particularly resolution 1514 (XV). The colonial territories were excluded from the territorial integrity of the metropolitan countries; they had acquired a quasi-independent status under the tutelage of the United Nations - a political and legal status distinct from the State personality of the colonial Powers.

As a result of United Nations activities in the application of the principle under discussion, many countries in Asia and Africa had emerged as independent States but colonialism had contrived to linger on. In that connexion, he drew attention to the heroic struggle being waged by the peoples of such Territories as Zimbabwe, South Africa, South West Africa, Angola and Mozambique. That struggle showed that, contrary to what had been suggested by the Canadian delegation, the principle of self-determination was not diminishing in importance. The value of that principle could not be diminished until the last vestiges of colonialism had been erased from the earth.

Certain colonial and other Powers had attempted to distort the true meaning of the principle of self-determination and had endeavoured to use it as a pretext to subvert the independence and territorial integrity of established sovereign States. It was for that reason that the General Assembly, in operative paragraph 6 of its resolution 1514 (XV) had stressed that the principle of self-determination could not be invoked to justify "the partial or total disruption of the national unity and the territorial integrity" of a sovereign State. It was accordingly the understanding of his delegation that the principle of self-determination was applicable to peoples under alien domination or colonial rule but not to parts of existing States. As to the right of a people to choose its own form of government and economic and social system, it was closely connected with the principle of sovereign equality and non-intervention. That proposition represented the internal aspect of the principle now under discussion.

The various proposals submitted to the Committee had many points in common but his delegation believed that the formulation of the principle under discussion contained in the proposal by the non-aligned countries fully met, from the juridical point of view, the

<sup>1/</sup> I.C.J. Reports 1960, p.96.

needs of the contemporary world, since it was squarely based on the various resolutions of the General Assembly. At the 65th meeting, the United Kingdom representative had cited the somewhat picturesque language used by his delegation in the General Assembly in opposing resolution 2160 (XXI). Unfortunately, it only reflected a point of view which was totally remote from reality and which showed a lack of appreciation for the process of contemporary law-making. Modern international law was being progressively developed precisely on what the United Kingdom delegation had called "the accumulated patchwork of occasional accommodation", and had long ceased to be laid down by Papal Bull or Imperial Edict. What current international opinion believed to be right was and should be considered current international law. As for the rush, haste and hurried compromise to which the United Kingdom delegation had referred, they were unfortunate characteristics of all contemporary human activity. The International Law Commission had a limited number of weeks for its annual deliberations and the plenipotentiary conferences convened under United Nations auspices had also very little time at their disposal. Moreover, the fact that there might be some vagueness or ambiguity in certain General Assembly resolutions did not necessarily mean that the United Nations was proceeding in the wrong direction. As stressed by such distinguished writers as Pound and C.W. Jenks, flexibility was an essential ingredient of any legal order. General principles, however vague in character, helped to promote the development of international law. The principles governing international relations could not be formulated in the same precise form as a contract of lease or insurance.

The reluctance of some countries to accept certain formulations of legal norms and their attempts to whittle down the significance of those norms was perhaps due to historical reasons but it was fair to describe it, as had been done in a statement by Dr. Schachter to a symposium held in 1963 at McGill University, as the "ostrich approach". In order to explain the position of his own delegation in the matter, he could do no better than to quote from that same statement:

"The fact that the General Assembly has not been granted competence to legislate (except on matters of internal organization) is not sufficient to divert the strong desire for an expression of international policy that would facilitate orderly and peaceful development ... There are those who feel that general principles of a vague character should not be treated as legal rules but as political principles. I am not at all persuaded by their reasoning .... We must accept the fact that a measure of ambiguity is inevitable and that we are not in a position to reach agreement in very specific terms on many major questions. The important task, it seems to me, is to establish a foundation for a process of authoritative decision." 2/

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2/ Law and Politics in Space, Montreal (McGill University Press), 1964, pp.96-97.

In conclusion, he reiterated his delegation's view that resolution 2160 (XXI) was of the utmost importance to the present work and should be the rock on which the Committee should build.

Mr. ZDROJOWY (Poland) said that the task of formulating the principle under discussion would be a very difficult one to fulfil if the Committee had had at its disposal only the text of the Charter. Fortunately, however, the Committee could also rely on the preparatory work of the Charter and on the rich practice and opinions of nations and peoples and the decisions of various United Nations organs. An analysis of the documents of the San Francisco Conference showed : (1) that the principle of self-determination of peoples was inseparably linked with that of equal rights; (2) that "an essential element of the principle" was a "free and genuine expression of the will of the peoples"; (3) that the principle must be applied to all peoples without any distinction as to their stage of development, and (4) that the principle should be "considered in function of other provisions" of the Charter<sup>3/</sup>.

In addition, the General Assembly had adopted a number of resolutions, such as resolution 567 (VI), 648 (VII) and 742 (VIII) which stressed the pre-eminent importance of the granting of independence for the attainment of the purposes of the Charter by dependent peoples. However, the most important resolution in that respect was resolution 1514 (XV), proclaiming the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960. That Declaration took into account the changes which had taken place since the drafting of the Charter. The Declaration did not amount to an amendment of the Charter; what it had done was to interpret the relevant provisions of the Charter so as to bring them into line with the life they were meant to serve. Furthermore, the Committee must bear in mind the terms of operative paragraph 1 (b) of General Assembly resolution 2160 (XXI) which made it clear that the Assembly considered unjustifiable "any forcible action" which deprived "peoples under foreign domination of their right to self-determination".

Lastly, the two International Covenants on Human Rights adopted by General Assembly resolution 2200 (XXI) began with an emphatic proclamation of the right of self-determination in article 1 of both Covenants. Equally significant was the provision "Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources", which appeared as article 25 of the International Covenant on Economic, Social and Cultural Rights and as article 47 of the International Covenant on Civil and Political

<sup>3/</sup> See documents of the United Nations Conference on International Organization, I/1/A/19 (vol.VI, p.704).

Rights. That statement, taken in conjunction with the provisions of resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, completed the picture of the interpretation given by the General Assembly to the principle of self-determination, which should serve to guide the Committee in its present work.

In the course of the discussion on the prohibition of the use of force, some delegations had suggested that resolution 2160 (XXI) should be disregarded as being more of a political statement than a legal document. That approach could not be reconciled with the text of Part II of the resolution itself, the second paragraph of which expressly stated that resolution 2160 (XXI) should be considered by the Special Committee in its further study of the principle of self-determination "with a view to the early adoption of a declaration".

He recommended that in the light of the documents to which he had referred the Drafting Committee should consider that the principle under discussion consisted of two closely inter-connected elements: equal rights and self-determination. As to the sphere of application of the principle, his delegation considered that it was the duty of all States to respect it, but that States which were responsible for the administration of Non-Self-Governing Territories and Trust Territories were especially bound to place the peoples of those territories in a position to avail themselves of their right to self-determination. The principle under discussion had two aspects: first, that States and peoples had the duty to respect the principle and, secondly, that those who did not yet enjoy self-determination should have the possibility of attaining it.

It was therefore clear that, where colonial Powers hampered or even thwarted the realization of the right of self-determination, the peoples concerned had the right to eliminate colonial domination and to carry out their struggle by all possible means. It was for that reason that, in operative paragraph 7 of resolution 2189 (XXI) on the implementation of the Declaration adopted in resolution 1514 (XV), the General Assembly had reaffirmed "its recognition of the legitimacy of the struggle of the peoples under colonial rule to exercise their right to self-determination and independence" and had urged "all States to provide material and moral assistance to the national liberation movements in colonial Territories".

Colonialism and trusteeship had always been considered as transitory institutions. As a system of political power, colonialism and neo-colonialism, practised in such places as South Africa and Southern Rhodesia, should be completely eliminated. The problem was not to reform colonialism, but to liquidate it.

For those reasons, his delegation supported the Czechoslovak proposal and the proposal submitted by the non-aligned countries on the subject, which contained many similar elements and which the Drafting Committee should be able to combine into a single text.

The United Kingdom draft had the defect of omitting a number of important elements and concentrating on matters which, as pointed out by the Burmese delegation, were not relevant to the subject under discussion. For example, the reference to zones of military occupation appeared to be aimed at directing the Committee's attention away from the main elements involved in the formulation of the principle under discussion.

In conclusion, he assured the Committee that his delegation would spare no effort to reach agreement on the meaning of the principle of equal rights and self-determination, the universal recognition and observance of which was of the utmost importance in ensuring compliance by States with international law.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that the Committee's report on its 1966 session<sup>4/</sup> had mentioned the fact that in their statements concerning self-determination members had referred to the United States Declaration of Independence and the French Revolution. Unfortunately, nothing had been said about the October Revolution of 1917 the significance of which should be brought out in the Committee's next report. The principle under consideration had been given its greatest impetus with the emergence of the working class and had formed the subject of the ninth point in the programme of the Russian Social Democratic Workers' Party adopted at its Second Congress in 1903. The October Revolution had transformed a declaration into reality and the principle was not only a fundamental element in Soviet domestic and foreign policy but also one of the main constitutional provisions of a Union that was based on the free association of equal Soviet Socialist Republics. Each Republic, the rights of which were guaranteed by the constitution, had the right to withdraw from the Union. On coming to power his Government had recognized the independence of Poland and Finland and had proclaimed the principle of self-determination in treaties with Afghanistan, Iran, Turkey and other States, thereby conferring upon it the status of a conventional rule of international law. It had also declared its adherence to the principle at the London Inter-Allied Conference of 1941 and its support for the right of all States to independence and territorial integrity as well as the right of all peoples to choose the political and economic structure of their country. Thanks to the efforts of his Government the principle had been included in the Charter. The provisions on Trust and Non-Self-Governing Territories represented a compromise between the views of the Soviet

<sup>4/</sup> Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230.

Government and those of Western Powers and made clear that the status of such Territories was transitory and a stage in the acquisition of full independence. Owing to his Government's insistence, the efforts of colonial Powers to prevent the principle from being discussed on the grounds that self-determination was a matter within the domestic jurisdiction of States had failed.

The Declaration on the Granting of Independence to Colonial Countries and Peoples, in General Assembly Resolution 1514 (XV), had been of decisive significance and had been adopted by 89 votes, in the teeth of fierce opposition from certain countries such as the United States, the United Kingdom, Portugal, Spain and South Africa, which had abstained. On the initiative of the Soviet Union the General Assembly at its sixteenth session had examined the implementation of that resolution and had adopted resolution 1654 (XVI). Following the consideration at the seventeenth session of a draft declaration and convention on the elimination of all forms of racial discrimination, such a declaration had been adopted in resolution 1904 (XVIII) in 1963. Other important international legal instruments such as those adopted at the conferences of non-aligned States at Belgrade, Cairo and Bandung had also dealt with the principle of self-determination.

National liberation movements were an outstanding feature of the times and were consistently supported by the Soviet Union and other socialist countries. However, although more than fifty countries had become independent many Territories, such as Portuguese and United Kingdom colonies, and Trust Territories, were still subjected to the horror of colonial domination. Imperialist States were desperately opposing independence movements first and foremost by armed force, as in Viet-Nam and Aden. In the Near East vigorous efforts were being made to prevent Arabs from living in freedom and independence. Imperialist Powers were also drawing subject peoples into aggressive blocs, such as the South-East Asia Treaty Organization (SEATO) and the Central Treaty Organization (CENTO), establishing military bases, imposing puppet regimes, as in Korea and South Viet-Nam, and concluding unequal treaties on so-called assistance. As examples of such treaties he referred to the United Kingdom-Maldives Islands Agreement of 1965 and the United Kingdom-Cyprus Agreement of 1960. Administrative arrangements between imperialist Powers and former colonies had also been created. All such forms of oppression must be taken into account in framing a principle aimed at bringing about the rapid end of colonialism in the interests of the progressive development of international law.

Instead of observing the provisions of the Charter and those of the Declaration on the Granting of Independence to Colonial Countries and Peoples, some Western Powers tried to confuse the issues and obstruct any unequivocal statement of the principle under consideration. By recourse to such theories as interdependence they were trying to argue that small States should not stand on their own feet and that the principle of sovereignty was outdated. The Committee's own report had reproduced the argument that self-determination might mean breaking up the world into small countries. The truth was that self-determination was one of the conditions of free co-operation, as demonstrated by events in Asia and Africa and the creation of such bodies as the Organization of African States.

While the representatives of imperialist States asserted that the principle of self-determination applied to all countries, instead of using it to promote the struggle against colonialism they sought to oppose historical forces by unlawful means, and it was not surprising that efforts to suppress rights and liberties always provoked sharp reactions, sometimes in the form of armed risings.

His delegation supported the Czechoslovak proposal and that of the non-aligned countries and considered that a compromise between the two could yield an acceptable formula.

The right to assist a people in its struggle for independence was recognized in modern international law and was based on the principle of equality and sovereignty so that the argument that national liberation movements were a violation of the Charter and international law could not be sustained, nor the argument that outside help was an unlawful interference in the internal affairs of the metropolitan Power. The enunciation of the principle of self-determination in the Charter proved that the question was of international concern, to be settled at the international level, and the provisions of Article 2 (7) therefore did not apply. General Assembly resolution 2105 (XX) and 2107 (XX) recognized the legitimacy of independence movements and called upon all Member States to give them material and moral support; the legitimacy of such support had been reaffirmed at the various conferences of non-aligned States.

A people striving for independence was a subject of international law and entitled to international protection from genocide. A violation of its rights in the struggle was an international crime and contrary to the purposes of the United Nations. An example of such a situation was to be found in South Viet-Nam, where, as the Secretary-General had recently stated, a war of national liberation was taking place.



The Committee had all the necessary elements for framing a legal principle on self-determination and should use the Charter as a foundation and a starting-point.

The fiftieth anniversary of the October Revolution would soon be celebrated in his country, and his countrymen would wish to extend their greetings to Canada which was celebrating its centenary, although the disappointment of people in Quebec was regrettable.

Mr. Van LARE (Ghana) said that the principle of equal rights and self-determination had been the subject of a number of different interpretations and one writer appeared to equate it with the principle of sovereign equality. In fact, a reference to the preparatory work of the Charter clearly revealed a distinction between the two principles, which were described by the Rapporteur of Committee I of Commission I at the San Francisco Conference as "two complementary parts of one standard of conduct"<sup>5/</sup>. In his delegation's view, self-determination of peoples referred not to the State but to one of its elements, i.e. the population and, in that regard, included peoples under colonial rule. Self-determination involved two elements: self-government and independence. Independence implied full internal responsibility for acts inherent in the exercise of external sovereignty, eligibility for Membership in the United Nations and the power to enter into direct relations with other States and to sign treaties. Self-government implied the free expression of popular opinion as to the status of the Territory, the exercise of legislative, executive and judicial powers and economic, social and cultural autonomy.

The right of self-determination, which had never been recognized before by positive international law in respect of colonial peoples, had been instituted by the Charter of the United Nations and had been subsequently reiterated in such international instruments as the International Covenants on Human Rights, the "Declaration on the granting of independence to colonial countries and peoples" contained in General Assembly resolution 1514 (XV) and resolution 2160 (XXI).

The right of self-determination was now recognized as an international right: it was no longer regarded as an essentially domestic matter, because of the very close link existing between self-determination and the maintenance of international peace and security, in that a people denied the right of self-determination would constitute a threat to world peace and security.

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<sup>5/</sup> See documents of the United Nations Conference on International Organization, (Vol. 6, p. 455, document 944 1/1/34 (1), p.10).

The most perplexing problem with regard to the principle under discussion was that of determining to whom the right of self-determination applied. It could not be maintained that every ethnic, cultural or geographical group had the right to carve their own state out of the territory of a sovereign State. Nor could it be maintained that any group governed by a sovereign State had the right of self-determination. In that respect, the delegation of Ghana agreed with the author of a recent book that "Self-determination refers to the right of the majority within a generally accepted political unit to the exercise of power. In other words, it is necessary to start with stable boundaries and to permit political change within them"<sup>6/</sup>. His delegation also held the view that if the right of self-determination was illegally denied and the United Nations were prevented by the exercise of the veto from enforcing that right, the people concerned should have the right to ask and receive aid from other States in order to secure their right of self-determination. It was for that reason that Ghana and the other non-aligned countries had included paragraph 2 (b) in their formulation of the principle under discussion. That right, however, should only be invoked if all possible means failed to secure their legitimate rights to the people concerned and only if their struggle was being suppressed by armed force. It was worth mentioning that the United Kingdom formulation was completely silent on that point - an omission which was an eloquent indication of the equivocal position of its sponsor.

The recognition of the right of self-determination as a legal right gave the lie to the policy of certain colonial Powers which regarded their colonies as integral parts of the metropolitan country. Paragraph 2 (e) of the non-aligned formulation expressed the legal position in that respect and it was significant that the United Kingdom formulation was again silent on that point.

The nations of the world had achieved a substantial degree of maturity in their attitude towards the existence of certain fundamental rights. Those nations recognized without hesitation that there existed certain relationships between Government and governed which fell clearly within the concept of colonial domination. Those relationships basically entailed the subjugation of the interests of a recognizable group to the interests of another recognizable group in which the power of government rested. A formulation such as "all people under colonial domination" would easily cover a great majority of cases where that condition was clearly recognizable. Where

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<sup>6/</sup> Mrs. R. Higgins, The Development of International Law through the Political Organs of the United Nations, p.104.

the condition was not clear, the United Nations, acting perhaps through the International Court of Justice, could be given power to decide whether there was colonial domination. That decision would not be based on purely subjective grounds; there were such relevant factors as geography, ethnic diversity, cultural diversity, relative voice in government, and history.

The people to whom the right of self-determination would be accorded would thus be those which, in an area which was geographically distinct from the ruling area, were subjugated by the Government in a manner repugnant to the modern notions of government by the consent of the governed.

The right of self-determination was the right to independence. Before a people could freely choose their destiny - including the possible choice of annexation to, or free association with, a sovereign State - they must have a position of equality among the nations. That equality was the only real guarantee of true freedom of choice, a freedom which was the very foundation of the principle of equal rights and self-determination of peoples.

The equal rights of peoples, which was the second element in the principle under discussion, had perhaps tended to be ignored because of the fact that the Committee had to discuss separately the principle of sovereign equality. Self-government and independence were not enough, and a new State must be juridically equal and possess the same status in law as other sovereign States. There was a considerable degree of doubt about that right because of the disparity in real power and the "great Power" concept reflected in the position of the permanent members of the Security Council and in the provisions concerning the veto, which could also be applied against the entry of new States into the United Nations. O'Connell had recently argued that equality did not mean that a State was bound by only those rules of international law to which it had agreed, that customary law could not grow independently of the will of a recalcitrant State, that every international person possessed the same legal rights as others or that all States must equally engage in forming the law. Equality as a general legal concept implied impartiality in the application of law. Apart from the primacy of the permanent members of the Security Council and the majority vote principle in the General Assembly, the Charter must be construed as favourable to the equality of voice and the equality of jurisdictional rights of all Members.

The principle of equal rights and self-determination should cover both aspects and his delegation proposed the addition of a paragraph 3 to the formulation of the principle in the non-aligned draft reading:

"No State or any organ shall exercise jurisdiction over any other State or peoples except with the free and express consent of the State or peoples concerned and only to the extent to which that consent is given."

That clause was intended not to license subversion by minority interests but as a means of ensuring the realization of the principle of equal rights and self-determination, and of securing an end to colonialism.

Mr. MILLER (Canada), exercising his right of reply, said that the Indian representative had been totally mistaken in attributing to him the view that the importance of the principle of self-determination was diminishing. In fact what he had said was that the diminishing problem of colonial domination, although certainly a serious one in the relatively few remaining parts of the world where it was still perpetuated, was a matter to be dealt with not under the principle concerning the threat or use of force but under the principle now being discussed. For the benefit of the Indian representative, he read out the relevant paragraph of the statement he had made at the 66th meeting. Colonialism was only one aspect of the principle of self-determination and he had certainly not sought to define that principle at that meeting.

Thanking the Soviet Union representative for his good wishes to the Canadian people, he said that all Canadians, but more especially those of Eastern European descent, would wish him to reciprocate by expressing an interest in the celebration of the October Revolution and a concern for the welfare of the varied and diverse peoples of the Soviet Union.

Mr. SINCLAIR (United Kingdom) said in exercise of his right of reply that his delegation needed no guidance from the USSR representative about the application of the principle of self-determination and had not taken kindly to a sermon about colonialism. The United Kingdom Government had consistently and sincerely tried to fulfil its Charter obligations and lead people to self-government and the free choice of their destiny. Nor did it underestimate the difficulties in Territories for which it was still responsible but there too it would continue to respect its obligations under the Charter.

It had never taken the view that declarations of the General Assembly, particularly those that had been carefully drawn up, were of no value, but it had protested against the hasty procedure followed in the drafting and submission of resolution 2160 (XXI).

Mr. REIS (United States of America), exercising his right of reply, said that the Soviet Union representative had stated that equal rights and the right of self-determination were the subject of one of the main constitutional provisions of the Soviet Union and that every Soviet Republic had the right to withdraw from the Union.

That went to confirm that the principle of self-determination was not only applicable in the colonial context, though that was one of its most important aspects, but in every country and came close to the right of every man to be free.

The Soviet Union representative had gone around the world picking out countries and Territories he disliked and labelling them as colonial, ripe for national liberation and appropriate subjects for national freedom movements. He had mentioned Viet-Nam, the Republic of Korea and member countries of SEATO and CENTO. It was that kind of propaganda that had made the United States chary of broad generalization about movements of national liberation.

The United Nations Secretary-General was entitled to universal respect but with respect to Viet-Nam the United States delegation would simply recall the recent statement by the President of the United States.

The meeting rose at 1.15 p.m.



UNITED NATIONS  
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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-FOURTH MEETING

Held at Headquarters, New York,  
on Wednesday, 13 April 1966, at 11.10 a.m.

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  - (b) The principles of equal rights and self-determination of peoples (A/AC.125/L.16, L.31 and Add.1, L.32)  
(continued)

PRESENT:

<u>Chairman:</u>	Mr. KRISHNA RAO	(India)
later,	Mr. MOLINA	(Venezuela)
<u>Rapporteur:</u>	Mr. RIPHAGEN	Netherlands
<u>Members:</u>	Mr. MAMERI )	Algeria
	Mr. BENZITOUNI )	
	Mr. GOÑI DEMARCHI	Argentina
	Sir Kenneth BAILEY )	Australia
	Mr. McKEOWN )	
	U TUN WIN	Burma
	Mr. ENGO	Cameroon
	Mr. MILLER	Canada
	Mr. FOTOCNY	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MOROD	France
	Mr. VANDERPUYE	Ghana
	Mr. VIZCAINO LEAL	Guatemala
	Mr. S.N. SINHA	India
	Mr. ARANGIO RUIZ	Italy
	Mr. HATANO	Japan
	Mr. BHOI	Kenya
	Mr. CHAMMAS	Lebanon
	Mr. RAKOTONDRAINIBE	Madagascar
	Mr. MERCADO	Mexico
	Mr. ODOGWU	Nigeria
	Mr. WYZNER	Poland
	Mr. COVACI	Romania
	Mr. BLIX	Sweden
	Mr. NACHABE	Syria
	Mr. ILYIN	Union of Soviet Socialist Republics
	Mr. ABOUL NASR	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland

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PRESENT (continued):

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

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CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2105 (XX) A AND B OF 29 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, L.31 and Add.1, L.32) (continued)

1. Mr. MOLINA (Venezuela) said that his delegation, having already stated its general views on the item (A/AC.125/SR.41), would now comment on the specific proposals before the Special Committee on the basis of the applicable rules of the United Nations Charter, the Charter of the Organization of American States, the inter-American conventions, the resolutions of the General Assembly, and his delegation's position concerning the direction which the Special Committee's work should take.

2. Recalling that the Special Committee in its consideration of principle C had sought to preserve the text of General Assembly resolution 2131 (XX), his delegation considered the same argument valid with respect to principle F and General Assembly resolution 1514 (XV). Both resolutions were the expression of aspirations which were almost unanimous, and indeed, from the legal standpoint, were in fact unanimous in view of the way in which abstentions were interpreted under the rules of procedure. Accordingly, his delegation would reserve its position regarding opinions, ideas or approaches which might diminish the importance of General Assembly resolution 1514 (XV) or distort it by the introduction of elements which lent themselves to disagreements of substance and which - it was clear from the outset - could not lead, at least at present, to compromise solutions.

3. The eleven-Power proposal (A/AC.125/L.31 and Add.1) was based in general on statements in the Charter and in General Assembly resolutions 1514 (XV), 1541 (XV), annex, and 2131 (XX). His delegation fully respected the views of the sponsors of that proposal and duly appreciated the ardent desire for freedom which they wished to transmit to the world through the Organization. The joint proposal, however, had to be adapted to many different demands and needs, including most importantly the competition for time and the need for a legal approach. Thus, given the marked contrast between ideals which were undeniably

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(Mr. Molina, Venezuela)

well founded and realities which in practice shaped the daily life of a sector of the international community - a contrast which made it practically impossible to achieve the agreements so earnestly desired - his delegation felt that the best contribution it could make would be to take the following position: to support unconditionally the ideas set out in paragraphs 1, 2 (c) and 2 (d) of the eleven-Power proposal; to support paragraph 2 (e), on the understanding that it referred to a geographical fact which destroyed any legal fiction that an overseas territory was part of the metropolitan territory, but that another fact could not be disregarded, namely, the sovereignty exercised by the administering State, which had to comply with the obligations imposed by Chapter XI of the Charter; to abstain from the vote on paragraph 2 (a) unless its terminology was adapted to that used in General Assembly resolution 1514 (XV), paragraph 6; and to enter a reservation concerning paragraph 2 (b) because of the implications that might arise from the interpretation of situations within the purview of Article 51 of the Charter.

4. The United States proposal (A/AC.125/L.32), while it also took account in general terms of the provisions of the Charter and of the aforementioned General Assembly resolutions, resulted in a unilateral approach to the problem. Self-determination and the repudiation of colonialism were so closely connected that the development of self-determination could not be understood without the condemnation and elimination of colonialism. That interrelationship could not be disregarded, and had not been disregarded in General Assembly resolutions 1514 (XV) and 2131 (XX). The expression "in particular cases" in the introductory sentence of paragraph 2 of the United States proposal weakened the idea stated in that sentence; and the presumption established in paragraph 2.B. of that proposal, having regard to the elements included, seemed to be not a presumption but the recognition of a right. The free association and integration referred to in paragraphs (3) (b) (2) and (3) should take into account the statements in principles VII, VIII and IX of the annex to General Assembly resolution 1541 (XV). Subject to those comments, his delegation supported the United States proposal.

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(Mr. Molina, Venezuela)

5. The Czechoslovak proposal (A/AC.125/L.16, section VI) was also generally acceptable to his delegation, except for paragraphs 2 and 3 to which his observations concerning the eleven-Power proposal were equally applicable.

6. He suggested that the Special Committee, in view of the limited time remaining to it, should pass on to the General Assembly the task of considering principle G. The time originally allotted to the consideration of that principle could then be used by the Drafting Committee, and the Special Committee would be able to submit a more careful and thorough report on the first six principles.

7. Mr. NABRIT (United States of America) said that the people of his country were no strangers to the principle of equal rights and self-determination of peoples. They had had a part in the actual application of the principle, in whose articulation President Wilson had played a major role and through it the political map had been redrawn to conform more closely to the aspirations of the peoples of the world.

8. The fact that the Special Committee was having a discussion not of the desirability of respecting the principle of equal rights and self-determination of peoples, but of the legal obligation to do so represented a relatively new development in the history of mankind. He shared the French representative's doubts that a statement of principle F in legal terms could be prepared in the little time available, but the fact that the Special Committee was discussing a legal obligation might be useful. He agreed that some step, such as that suggested by the Venezuelan representative, might have to be taken.

9. At the twentieth session of the General Assembly his delegation had made some general observations about the legal principle of self-determination and the problems which any serious effort to state its scope and content, under the United Nations Charter, was bound to engender. The present United States proposal (A/AC.125/L.32) was one effort to meet this problem. His delegation had said that the principle of self-determination, as stated in the United Nations Charter and as given effective expression in the procedural mechanisms built into the Charter, was not limited to colonial situations and situations involving Trust Territories under the Trusteeship System - although that system was one of the most significant features of the Charter, and one which had been most successful in application. The Special

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Committee's task would be measurably simpler if the principle was so limited, for in those situations the applicability, at least, of the Charter principle was relatively clear, even though there might be disagreement as to the legal consequences of its application.

10. It was in order to avoid the serious hiatus which would be left in the Committee's treatment of the principle if its consideration were confined to what might be called classic colonial cases that his delegation had put forward paragraphs 2.A.(1) and (2) of its proposal. Paragraph 2.A.(2) differed from paragraph 2.A.(1) in that the applicability of the principle in the situations covered by the former paragraph was prima facie only and was subject to being rebutted by a further examination of the characteristics of the situation in question. It rested, however, on the fundamental premise that when a territory over which a State exercised sovereignty exhibited certain basic divergencies from the bulk of that State's territory, there was at least a legitimate question whether principle F was being satisfied. If upon further examination it was shown, for example, that the conditions described in paragraph 2.B. in fact existed, then it followed that the requirements of the principle were met. The premise expressed in paragraph 2.A.(2) had, of course, been previously stated in the United Nations, notably in General Assembly resolution 1541 (XV), but not in a purely legal statement of the principle of self-determination.

11. While paragraphs 2.A.(1) and (2) set down the conditions of applicability of the principle, the function of paragraph 2.A.(3) was to state, in general terms, the legal consequences of its application, in terms of the obligations of Powers exercising authority over territories to which the principle applied.

Paragraph 2.A.(3)(a), drawn from Chapters XI and XII of the Charter, described the actions that must be taken in the process of compliance with the principle as envisaged in the Charter, while paragraph 2.A.(3)(b) described the conditions that must finally be achieved in order fully to satisfy the requirements of the principle.

12. Paragraph 2.B. served a dual function. First, no rational international legal order could exist if the Charter were taken to sanction an unlimited right of secession by indigenous peoples from sovereign and independent States, nor could such a right be found in the Charter. Secondly, however, the Charter by the

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(Mr. Nabrit, United States)

inclusion of the concept of self-determination of "peoples", provided a certain standard by which to judge the legitimacy of the modes of political organization which were imposed upon peoples within the framework of a world community composed of sovereign States. The phrase "possessing a representative Government, effectively functioning as such as to all distinct peoples within [a State's] territory" in paragraph 2.B. was intended to express that standard.

13. Regarding the two other proposals before the Committee (A/AC.125/L.16, section VI, and A/AC.125/L.31 and Add.1) he would at that stage make only two general observations. First, in his delegation's view what was required was a comprehensive exposition of principle F as contained in the Charter. When judged by that standard, those proposals fell considerably short of the mark. Secondly, both proposals raised a range of problems which had already confronted the Committee in connexion with principles A and C - problems having to do basically with the scope of the lawful use of force in international relations, as prescribed by the Charter. As a matter of law, his delegation could not find from an examination of the Charter scheme for the self-determination of peoples or elsewhere in the Charter any separate and special treatment of colonial or other situations involving the principle of self-determination, with regard to the lawful use of force. As a matter of policy, his delegation expressed its confidence in the adequacy of that scheme - which embraced virtually all of the Charter - to the task which it was designed to meet. The two proposals were not consistent with the Charter in that respect. He also referred, in particular, to the difficulty created by the phrase "the subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism" in the eleven-Power proposal (A/AC.125/L.31, para. 2(a)). The members of the Committee, as jurists, might subject such language to the reasoned scrutiny of juridical analysis and might even satisfy themselves that, with appropriate interpretation, it did not exceed the scope of principle F. But the texts produced by the Committee would be thrust into the arena of international political relations, where language of that sort unfortunately seemed already to have acquired its own special connotation - a connotation by which, as had been seen on too many recent occasions, it was directed by States against other admittedly sovereign and independent States for extraneous reasons of politics, ideology, or territorial acquisitiveness.

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14. Mr. SINCLAIR (United Kingdom) said that his delegation had a particular interest in the application of the principle of equal rights and self-determination of peoples in view of his Government's many past responsibilities. The United Kingdom commitment to the implementation of the principle of self-determination was absolute and unqualified and had been stated on many occasions. It should not be thought, however, that his delegation considered that the principle applied exclusively to the peoples of Non-Self-Governing and Trust Territories. The essence of the principle which had emerged from the various peace settlements following the First World War was that the wishes of the peoples concerned should be fully taken into account before territorial changes were made. It was clear, moreover, that the drafters of the Charter had had that particular aspect of the principle in mind together with the related aspect concerning the aspirations of peoples which had not yet attained a full measure of self-government. It had been emphasized at San Francisco that the principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Charter, and, on the other side, that it conformed to the purposes of the Charter only in so far as it implied the right of self-government of peoples and not the right of secession.

15. Several commentators of the Charter, including Kelsen, had argued that the juxtaposition of the concepts of equal rights and self-determination of peoples showed that the Charter essentially referred to the principle in terms of independent States and that therefore the concept was closely linked to the principles of sovereign equality and non-intervention. It might be objected that that argument was based on too close a textual analysis of the Charter and did not truly reflect the intentions of its authors. While his delegation agreed that the principle applied primarily to independent States, it would not argue that it applied exclusively within those narrow limits. Similarly, it could not agree that the language of the Charter could support the claim that a part of a sovereign independent State was entitled to secede from that State, or the suggestion that administering Powers were not the final arbiters in questions affecting the implementation of the principle in the Territories under their administration.

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(Mr. Sinclair, United Kingdom)

The interests of the peoples of such Territories were, of course, paramount. But a too rigid conceptual framework for the application of the principle could lead to loss of flexibility. Non-Self-Governing Territories varied enormously in size, resources and population and some might neither wish nor be physically able to assume the full responsibilities of independent statehood.

16. The principle of self-determination could not be confined within the strait-jacket of current preoccupations over decolonization, although its application to the process of decolonization was recognized. It had been accepted at San Francisco that an essential element of the principle was the free and genuine expression of the will of the people, thus demonstrating that the principle was one of universal application. The existence of a representative government no doubt ensured that the principle was genuinely applied in the case of a sovereign independent State. There might therefore exist a presumption to that effect which could be noted in any text formulated on the principle.

17. His delegation had considerable difficulty with the Czechoslovak proposal (A/AC.125/L.16, section VI). If the principle of self-determination was taken to be universal, then almost insuperable practical difficulties might be caused by the use of the words "All peoples have the right to self-determination." In whom, for example, did that right inhere and upon whom was imposed the correlative duty? Could the existence of that right be used to justify, on the basis of an alleged expression of the popular will, claims to annexation of part of a neighbouring State? His Government's views on those questions were expressed in detail in document A/5725/Add.4. His delegation had also made its position amply clear on previous occasions on the so-called right of self-defence against colonial domination which was implied in paragraph 3 of the Czechoslovak proposal. In so far as other elements of the proposal derived from General Assembly resolution 1514 (XV) he would recall that his delegation had abstained from voting on that resolution in 1960 for reasons stated at the time by the United Kingdom representative. Similar difficulties arose with regard to the eleven-Power proposal (A/AC.125/L.31 and Add.1). His delegation did, however, favour the general approach to the principle reflected in the United States proposal (A/AC.125/L.32).

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18. Mr. RIPHAGEN (Netherlands) said that the importance of the principle of equal rights and self-determination of peoples could not be exaggerated: it went to the root of all law and justice and was based on the right of collective self-expression. However, it was not always easy to translate such fundamental concepts into a body of legal rules, particularly when such rules were to govern relations between sovereign States. Any codification of the principle must necessarily indicate which groups enjoyed the right in question and the conditions and manner in which it was to be exercised. Those criteria were amply met by the United States proposal which accordingly deserved the Committee's support.

19. The other proposals before the Committee seemed to concentrate on only some of the implications and consequences of the principle. Sub-paragraph 2 (b) of the eleven-Power proposal (A/AC.125/L.31 and Add.1) seemed incompatible with the principle concerning the threat or use of force. Sub-paragraph 2 (e) seemed to imply that the legal status of a territory under national law as an integral part of a State did not in itself constitute an obstacle to the applicability of the principle of self-determination to the peoples within that territory. While the idea was itself correct, the wording of the proposal seemed, in legal terms, to take away the protection a particular territory derived from the existing rules of international law; the same idea was expressed more adequately in the United States proposal (A/AC.125/L.32).

Mr. Molina (Venezuela) took the Chair.

20. Mr. ABOUL NASR (United Arab Republic) said that the principle of equal rights and self-determination of peoples had played a significant role in the history of the United Nations and had been invoked more often than any other. In its formulation of the principle, the Committee had a wealth of material to draw upon. Various United Nations organs had adopted resolutions and declarations on the subject and the Third Committee of the General Assembly, in particular, had studied the principle and had included provisions on self-determination in the draft covenants on human rights.

21. There were several elements involved in the formulation of the principle. First, the principle was binding on States, as was made clear both in the Charter and in United Nations declarations and resolutions on the matter. Secondly, as a

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(Mr. Aboul Nasr, United Arab Republic)

legal principle, self-determination created rights and duties under international law. All peoples inherently had the inalienable right to self-determination and States had the duty to respect and facilitate the exercise of that right. Thirdly, colonialism was in consequence a violation of the principle and thus a violation of the Charter. In that connexion, he drew attention to the fact that some peoples and nations were still subject to foreign rule which had been established in various ways. In some cases, it had been established through flagrant aggression followed by permanent military occupation; in others, administering Powers had betrayed their mandate to prepare the indigenous populations for self-government and had imported armed foreign settlers. Colonial Powers had also on occasion dispatched settlers and then armed them so that eventually they had been able to dominate the indigenous peoples; in yet other cases, the colonial Power had concluded trade agreements with individuals who had not necessarily been the genuine representatives of the colonial peoples and had used those quasi-legal instruments to justify its presence. In all those cases, racism had been both a motivation and a product of colonial policy. It was now the duty of the international community to ensure that the peoples concerned were allowed to exercise their inherent right of self-determination.

22. The fourth element to be borne in mind was the fact that the principle was sanctioned by law. Violation of the principle by colonial Powers, particularly through the threat or the use of force, entitled the colonized peoples to liberate their territories from foreign occupation and to receive assistance from other States and international organizations. That corollary to the principle of self-determination had been endorsed by the General Assembly, which had called upon all States to provide moral and material assistance to national liberation movements.

23. The fifth element was the fact that the principle, as confirmed by United Nations practice, applied primarily to peoples subject to foreign domination. That had been the meaning clearly attributed to the word "people" by the authors of the Atlantic Charter when they had stated that they wished to see sovereign rights and self-government restored to those who had been forcibly deprived of them. The difficulty of achieving an agreed definition of the term "people" should in no

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(Mr. Aboul Nasr, United Arab Republic)

way impede the application of the principle. The international community was now mature enough to distinguish between genuine self-determination and secession in the guise of self-determination.

24. Mr. ENGO (Cameroon) said that his delegation would not have found it necessary to join in the denunciations of imperialism but for the fact that some nations still felt that imperialism was a justifiable policy. His country well knew what it meant to be dominated by another, since it had been colonized by three colonial Powers in one century. There was, moreover, a tendency to discuss colonialism in purely academic terms although it was a living reality; his country was still endeavouring to eliminate the vestiges of the colonial era. It would not consider its freedom and independence complete while others were living in conditions worse than those to which it had itself been subjected.

25. Attempts had been made to justify colonialism in various ways. It had been suggested that colonizers had wished to bring religion to atheists, despite the fact that Africa had had its own religions long before their arrival. Another suggestion had been that colonizers had come to civilize which had perhaps meant that Africa was to be made European, although at best, the imperialists had merely attempted to impose enough culture to promote economic productivity. It was questionable whether Portugal, for example, wished to make Africans into Europeans and there was, moreover, no need for the African to become a European since his culture was quite different: Africans regarded civilization as a thing of the mind and not as the possession of material wealth. Furthermore, since the concept of colonialism included the concept of exploitation, it could hardly be said to be an act of civilization. It had also been suggested that colonialism had been necessary in order to administer peoples incapable of administering themselves. In the case of Cameroon, however, the system of indirect rule which had been introduced by the United Kingdom, had been clear proof that his country had been capable of administering itself.

26. The United Nations should bend all its efforts to condemning and eradicating colonialism. Portugal and South Africa were in need of both civilization and education and the existing regime in Rhodesia was not only ignorant of the lessons of history but totally despised them. There were, moreover, other no less reprehensible although often disguised forms of colonialism still existing elsewhere in the world.

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(Mr. Engo, Cameroon)

27. His delegation was a co-sponsor of the eleven-Power proposal (A/AC.125/L.31 and Add.1) because it believed that all peoples had the right to self-determination, that all men were created equal and that the subjection of peoples to alien domination was both immoral and illegal.

28. Sir Kenneth BAILEY (Australia) recalled that the inclusion in the Charter of the expression "equal rights and self-determination of peoples" had been the result of an amendment proposed by the USSR delegation at San Francisco, and was based on a provision in the Constitution of the USSR. That could be taken as an indication that the principle had not been understood at San Francisco as being limited to peoples under colonial rule, but had been seen primarily in its historical, European context. In his delegation's view, the attempt made in documents A/AC.125/L.16 and A/AC.125/L.31 to limit its application to peoples under some form of colonial rule was a departure from the Charter. The United States proposal (A/AC.125/L.32), which endeavoured to place the principle in a more universal perspective, deserved the careful consideration of the members of the Drafting Committee.

29. His delegation regretted that in proposals for the formulation of a juridical text stating the principles of international law there should be a failure to distinguish between the situation of Non-Self-Governing Territories which were being administered in accordance with the provisions of the Charter and those which were not. The objectives set out in Chapters XI to XIII of the Charter, which owed much to initiatives by the United Kingdom and Australia at San Francisco, were wholly consistent with the principle of equal rights and self-determination of peoples. His delegation rejected the derogatory description which had been given of the international trusteeship system by one representative at the previous meeting; that system was an honourable and accepted part of the machinery established by the Charter.

30. He also wished to say that the objectives pursued by Australia in respect of the Territories for whose administration it was responsible before the United Nations did not include the reprehensible objectives just referred to by the representative of Cameroon. Spokesmen for the Australian Government had made it clear that Australia regarded itself as under an obligation to provide, as soon as practicable, an opportunity for the people of the Territories under its

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(Sir Kenneth Bailey, Australia)

administration to exercise full self-determination and had given assurances that Australia would respect the choice of the populations concerned regarding their future.

31. His delegation welcomed the attempt made in the United States proposal to formulate the scope of the principle of self-determination in legal terms. On the other hand, documents A/AC.125/L.16 and A/AC.125/L.31 in Australia's view, both departed in some respects from the Charter, and contained provisions which were unacceptable for reasons already stated by the representatives of the United States and the United Kingdom. His delegation had abstained in the vote on General Assembly resolution 1514 (XV), and had made clear that it did not regard that resolution as a whole as representing a formulation of international law.

Mr. Krishna Rao resumed the Chair.

32. Mr. MILLER (Canada) said that it was natural that the emphasis today should be on the desire and determination of all peoples to be free and equal under the law. Canadians sympathized with that desire, for Canada had once been a colony and had been one of the first to evolve from colonial status to independence. The principle of equal rights and self-determination of peoples was basic to the United Nations Charter and already enjoyed very wide acceptance.

33. Some of the main elements of the concept of equal rights and self-determination of peoples were enumerated in detail in the Charter, in Chapters XI and XII, in the Preamble and in Articles 1 and 55. There were differences regarding the interpretation of the principle. On the one hand it was argued that the principle must be interpreted as applying primarily to States, while on the other hand it was equally arguable that it concerned peoples as such. His delegation's view was that the principle was not meant to be limited to States. The debate had also revealed differences of opinion regarding the interpretation of the term "self-determination". When the era of decolonization had been at its zenith, the term had been taken to imply necessarily full independence. His delegation considered, however, that the Committee should avoid giving too narrow a definition to the term bearing in mind the fact that many of the smaller countries which were still dependent might prefer to maintain a status of association with another country rather than bear the responsibilities of complete independence. That possibility was recognized in General Assembly resolution 1541 (XV).

34. The Committee could not ignore General Assembly resolution 1514 (XV) as a declaration of what the international community expected with regard to colonial territories and peoples. That text was also, however, a political document which /...

(Mr. Miller, Canada)

should have no more than persuasive force in the Committee's discussions regarding the legal elements of the principle in question. The resolution declared that all peoples had the right to self-determination, and were entitled to determine freely their political status and to pursue freely their economic, social and cultural development; it also affirmed that attempts aimed at the partial or total disruption of the national unity and territorial integrity of a country were incompatible with the purposes and principles of the Charter.

35. There was some measure of common ground in the proposals before the Committee. In his delegation's view, the object should be to produce a balanced definition which was generally acceptable to all. A considerable measure of give-and-take would be required in order to produce a compromise text. Among the proposals submitted, his delegation favoured A/AC.125/L.32, regarding it as a serious attempt to produce a comprehensive and balanced statement of the several elements of the principle.

36. Mr. CHAMMAS (Lebanon) said that the Committee should never forget that the principles it was formulating would affect the lives of people. That was particularly relevant in relation to a principle which dealt explicitly with the rights of peoples. To try to assert that the Charter principle applied to States only could only be regarded as an attempt to stop the clock, and he was glad that most speakers seemed to be in agreement that the principle applied also to peoples which had not yet had an opportunity for self-expression.

37. Lebanon would like to add its name to the sponsors of document A/AC.125/L.31, which reflected its own position on the subject. With regard to the United States proposal (A/AC.125/L.32), his delegation would like to suggest an amendment: the introductory words of paragraph 2.A (1) should read "The principle is applicable to" and sub-paragraph (b) should begin "the indigenous population of a zone of occupation...". The purpose of that suggestion could be gathered from his earlier remarks.

38. Mr. VIZCAINO LEAL (Guatemala) observed that the principle of self-determination was a natural corollary of the principle of human freedom; moreover, the self-determination of one people necessarily implied respect for the rights of other peoples to self-determination. Unfortunately, some States denied that the principle had been accepted by the members of the international community as a legal

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(Mr. Vizcaino Leal, Guatemala)

principle. To make such a denial was an absurdity, since every State owed its own existence to an act of self-determination, as did the Governments which delegations represented.

39. Despite the appearance of the principle in a number of international instruments, many well-known authorities on international law claimed that it was a political and not a legal concept, or, like Kelsen, that the principle stated in the Charter referred exclusively to States and their sovereignty. The principle had not been recognized as a positive norm of international law prior to the Second World War, and although the Charter set forth the principle it did not define it. In his delegation's view, it was in the resolutions of the General Assembly that its scope was defined; he need only mention resolution 1514 (XV). Two essential objectives among others were set forth in that resolution. On the one hand it was affirmed that no people should be denied the right to establish itself as a State with full sovereign rights; on the other, it was laid down, in operative paragraph 6 that any attempt to disrupt the territorial unity of a country was incompatible with the Charter, and, in operative paragraph 7, that the sovereign rights of all peoples and their territorial integrity must be respected.

40. In order to establish the scope and limitations of the principle given legal force in that resolution, its text must be correctly interpreted. Professor Velasquez, former Permanent Representative of Uruguay to the United Nations, had discussed the meaning of paragraph 6 of the resolution in a study published in 1963. In that study, Professor Velasquez recalled that, during the discussion of the relevant draft resolution, Guatemala had introduced an amendment to state that the principle of self-determination could not impair the right of territorial integrity or the right to the recovery of territory. The representative of Guatemala at the time had argued that the addition was desirable for reasons of clarity, but he had withdrawn the amendment in the light of a statement by the representative of Indonesia, one of the sponsors, to the effect that the idea expressed in the Guatemalan amendment was fully covered by the existing text of paragraph 6. That interpretation was of great importance, Professor Velasquez added, for small countries which had been robbed of portions of their national territory; the strict application of the principle of self-determination would place the future of any such territory in the hands of a small group of settlers established there by the conquering Power. Thus the principle would serve to legalize a situation imposed by force.

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(Mr. Vizcaino Leal, Guatemala)

41. That concept had been recognized in the international law of the Americas; for example, it had been agreed at the Tenth Inter-American Conference held in Caracas in 1954 that the principle of self-determination was not to be applied to territories which were subject to litigation or claim between extra-continental countries and certain American republics.

42. Thus his delegation considered that resolution 1514 (XV) could be regarded as establishing a principle of international law, and that the Drafting Committee should base itself on that resolution. His delegation would be opposed to any draft which would either minimize the principle of self-determination or extend its scope beyond the limits established in that resolution.

43. His delegation was not in favour of putting to the vote the drafts submitted to the Committee, since the consequence of such a procedure would be to establish principles of a political nature rather than legal principles; the creation of a principle of international law necessarily required the consent of all the States making up the international community.

44. The CHAIRMAN said that the three proposals which had been submitted, together with the amendment to the United States proposal suggested by Lebanon, would be referred to the Drafting Committee.

The meeting rose at 1.15 p.m.