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***THE RIGHT  
TO SELF-DETERMINATION***

***IMPLEMENTATION  
OF UNITED NATIONS RESOLUTIONS***

*Study prepared by Héctor Gros Espiell*

*Special Rapporteur of the Sub-Commission  
on Prevention of Discrimination  
and Protection of Minorities*



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**UNITED NATIONS**

*New York, 1980*

## NOTE

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## ABBREVIATIONS

CMEA	Council for Mutual Economic Assistance
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECWA	Economic Commission for Western Asia
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
FRELIMO	Mozambique Liberation Front
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
<i>ICJ Pleadings</i>	<i>ICJ; Pleadings, Oral Arguments, Documents</i>
<i>ICJ Reports</i>	<i>ICJ; Reports of Judgments, Advisory Opinions and Orders</i>
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organisation
ITU	International Telecommunication Union
OAS	Organization of American States
OAU	Organization of African Unity
SWAPO	South West Africa People's Organization
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
WFP	World Food Programme
WHO	World Health Organization
WMO	World Meteorological Organization

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    - Special Committee against *Apartheid*
    - Committee on the Elimination of Racial Discrimination
    - International Conference on Human Rights (Teheran, 1968)
    - Commission on Human Rights
    - Sub-Commission on Prevention of Discrimination and Protection of Minorities
    - United Nations Development Programme
    - Administrative Committee on Co-ordination
    - United Nations Educational and Training Programme for Southern Africa
    - Committee on the Exercise of the Inalienable Rights of the Palestinian People
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## FOREWORD

The present version is based on the text issued under the symbol E/CN.4/Sub.2/405 (vols. I and II). However, additions, corrections and stylistic changes have been made in accordance with the statement by the Special Rapporteur when he submitted the updated text to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-first session (September 1978).

The United Nations resolutions cited and discussed are, generally speaking, resolutions adopted by various United Nations organs before the study was presented in its final version, at the thirty-first session of the Sub-Commission.

The Special Rapporteur wishes to state that this work has been carried out strictly within the framework of the resolutions which led to the preparation of the present study. In other words, although it freely expresses the views of the author, who alone is responsible for the contents, it is nonetheless a study prepared by the United Nations, with all that that implies as regards the theoretical and practical aspects, as well as the form of the study.

The Special Rapporteur has paid great attention to the views expressed in the Commission on Human Rights and in the Sub-Commission by the members who took part in the discussion on the study during the various stages of its preparation. He is sincerely grateful for those views, which have considerably enhanced the work. But he would reiterate his opinion, as expressed on those occasions, that the Special Rapporteur must act with complete independence and intellectual freedom, in accordance with the duty of giving his own assessment of the subject under consideration, something which involves his personal responsibility.

The Special Rapporteur expresses his thanks for the effective help provided for his study by the Secretary-General of the United Nations through the Division of Human Rights, whose staff have at all times given him their fullest co-operation.

In conclusion, the Special Rapporteur, conscious of the signal honour of having been appointed as such, wishes to state that the present study has not been conceived merely as a theoretical work on the right of peoples under colonial and alien domination to self-determination. On the contrary, while the study represents an attempt at a legal systematization of the subject on the basis of the activities of the United Nations, the aim has been to make a contribution to the ongoing process of securing full implementation of United Nations resolutions relating to the rights of peoples under colonial and alien domination to self-determination and, consequently, a contribution to the struggle against colonialism in all its forms.

HÉCTOR GROS ESPIELL

*Geneva, January 1979*

## INTRODUCTION

### A. Origin of the study, its discussion thus far in the United Nations and its relationship to other current studies

1. The mandate of the Special Rapporteur is set out in resolution 5 (XXX), adopted by the Commission on Human Rights on 20 February 1974, resolution 1866 (LVI) adopted by the Economic and Social Council on 17 May 1974, and resolution 4 (XXVII) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 16 August 1974. In its resolution 5 (XXX), the Commission on Human Rights had invited the Sub-Commission to appoint a Special Rapporteur to analyse the reports which the Secretary-General had submitted to the Commission in regard to United Nations resolutions concerning the right of peoples under colonial and alien domination to self-determination (E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1), and to make recommendations in this respect to the Commission at its thirty-second session, in 1976. The Council, in resolution 1866 (LVI), approved this recommendation of the Commission and requested the Secretary-General to give the Special Rapporteur any assistance necessary for the accomplishment of his task. In its resolution 4 (XXVII), the Sub-Commission, considering Commission resolution 5 (XXX) and Council resolution 1866 (LVI), appointed Mr. Héctor Gros Espiell Special Rapporteur on the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination and asked him to submit a preliminary study to the Sub-Commission at its twenty-eighth session, in 1975. In accordance with these resolutions, the mandate of the Special Rapporteur was, therefore, to consider the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination, analysing the Secretary-General's reports on this subject, and to submit a preliminary report to the Sub-Commission at its twenty-eighth session and recommendations to the Commission on Human Rights at its thirty-second session. The Special Rapporteur informed the Sub-Commission at its twenty-seventh session that his final report would be presented to it at its twenty-ninth session.

2. The origins of the present study can be traced back to the many resolutions which the United Nations has adopted since its inception with a view to implementing the right of peoples under colonial and alien domination to self-determination. In particular, by its resolution 2649 (XXV) of 30 November 1970, the General Assembly, considering resolution VIII of the International Conference on Human Rights (Teheran, 1968), emphasized the importance of the universal realization of the right of peoples to self-

determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights. Expressing its concern that many peoples were still denied the right of self-determination and were still subject to colonial and alien domination, the General Assembly deemed it necessary to continue the study of ways and means of ensuring international respect for the right of peoples to self-determination. It therefore requested the Commission on Human Rights to study, at its twenty-seventh session, the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination, and to submit its conclusions and recommendations to the General Assembly, through the Economic and Social Council, as soon as possible.

3. The Commission on Human Rights, at its twenty-seventh session, adopted resolution 8 A (XXVII) in which, *inter alia*, it expressed the belief that effective application of the principle of self-determination of peoples was the essential basis for recognition and observance of human rights and requested the Secretary-General to prepare an annotated collection of all the resolutions adopted by the various organs of the United Nations, the specialized agencies and the regional organizations relating to the right of peoples under colonial and alien domination to self-determination. The Commission decided, making use of this collection, to continue the consideration of the question with a view to appointing a Special Rapporteur at its twenty-eighth session.

4. On 6 December 1971, upon the recommendation of the Economic and Social Council in its resolution 1592 (L), the General Assembly adopted resolution 2787 (XXVI) in which, *inter alia*, it urged the Security Council as well as States Members of the United Nations or members of specialized agencies to take effective steps to ensure the implementation of the relevant United Nations resolutions on the elimination of colonialism and racism and to report to the General Assembly at its twenty-seventh session.

5. In accordance with Commission resolution 8 A (XXVII), the Secretary-General submitted to the Commission at its twenty-eighth session, in 1972, an annotated collection of the relevant resolutions (E/CN.4/1081 and Corr.1). Due to lack of time, however, the Commission was unable to consider this item at that session. At its twenty-ninth session, in 1973, the Commission had before it the report of the Secretary-General and an addendum thereto (E/CN.4/1081 and Corr.1 and Add.1). By its resolution 9 (XXIX), it decided to consider this item as a matter of priority, with a view to appointing a Special Rapporteur, at its thirtieth session. It also requested the Secretary-General to update his reports on the question and

to submit them to the Commission at its thirtieth session.

6. The preliminary study by the Special Rapporteur<sup>1</sup> was presented to the Sub-Commission at its twenty-eighth session, in 1975. The Sub-Commission discussed it at its 726th and 727th meetings, on 2 September 1975.

7. In introducing his study at the 726th meeting,<sup>2</sup> the Special Rapporteur underlined the fundamental nature of the right to self-determination and its importance as a prerequisite for the enjoyment of all other human rights. He stressed the importance of implementing United Nations resolutions on the subject in all their aspects: legal, political, economic, social and cultural. He drew attention to the important link between implementation of the United Nations resolutions on self-determination and the maintenance of international peace and security. He expressed the hope that those Governments and organizations from which he had requested information and which had not yet replied would do so in time for their replies to be included in his final study. He added that a comprehensive bibliography on the question would be appended to the final study.

8. The Special Rapporteur's approach received endorsement from all the members who spoke. Approval was expressed, in particular, regarding the parts of the study dealing with the economic aspects of self-determination. In this regard, it was said that "neo-colonial" activities of transnational corporations now had a role similar to that played in the past by colonialism. Reference was made to some particular cases mentioned in the preliminary study: one member of the Sub-Commission emphasized the importance of self-determination for the people of Palestine and another referred to the particular case of Belize.

9. At its 739th meeting, on 10 September 1975, the Sub-Commission requested the Special Rapporteur to submit his final study at its twenty-ninth session, in 1976. It decided to discuss that study at its thirtieth session, in 1977.<sup>3</sup>

10. By its resolution 3382 (XXX) of 10 November 1975,<sup>4</sup> the General Assembly reaffirmed the importance of the universal realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as imperatives for the enjoyment of human rights, and it further reaffirmed the legitimacy of the people's struggle for independence, territorial integrity and liberation from colonial and foreign domination by all available means, including armed struggle. The General Assembly declared, *inter alia*, that it keenly awaited the conclusion by the Sub-Commission of the present study. It decided to remain seized of the item at its thirty-first session and to consider reports by Governments, United Nations agencies and intergovernmental and non-governmental organizations on the strengthening of assistance to colonial territories and peoples under alien domination. The General Assembly adopted other resolutions referring in general terms to self-determination, in particular resolution 3398 (XXX), entitled "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to

Colonial Countries and Peoples in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialisms, *apartheid* and racial discrimination in southern Africa", resolution 3421 (XXX), entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations", resolution 3481 (XXX), entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", and resolution 3482 (XXX), entitled "Dissemination of information on decolonization". The many General Assembly resolutions which relate to specific territories and situations are referred to in the relevant chapters of the present study.

11. At the thirty-second session of the Commission on Human Rights in 1976, in the course of the debate on the question,<sup>5</sup> it was said that the right to self-determination, an essential prerequisite for the enjoyment of other human rights, had become a basic rule of international law. It was a dynamic right which assumed various forms. It included the right to participate freely in political life and to enjoy basic civil, economic, social and cultural rights. It was closely interrelated with the process of economic and social development. One opinion was that the right to self-determination should not be so interpreted as to lead to fragmentation of the national unity or territorial integrity of any nation.

12. Regarding the relationship between the present study and the study being prepared under Sub-Commission resolution 3 (XXVII) by Mr. Aureliu Cristescu, Special Rapporteur on "The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms", the view was expressed that, since the two studies dealt essentially with the same subject, the Sub-Commission should be urged to organize the work of the two Special Rapporteurs so that a single study could be submitted to the Commission in 1977.

13. The Special Rapporteurs were invited to give particular consideration to the following points: (a) the meaning of "free" determination of status and the element of consent; (b) the question of self-determination after the attainment of political independence; and (c) the means which could be used to achieve self-determination when it was being denied. As to the last point, one view was that, so long as the possibilities of peaceful international action had not been exhausted, the international community should not approve of recourse to violence. However, it was recalled that the General Assembly had repeatedly reaffirmed the legitimacy of the use of force by liberation movements under certain conditions. The Special Rapporteurs were invited to go more deeply into the question of what circumstances could justify the recourse to armed struggle in order to achieve self-determination.

14. By its resolution 9 (XXXII), of 5 March 1976, the Commission requested the Sub-Commission at its next session to study and prepare suggestions on

effective ways and means and concrete measures for securing the full and universal implementation of the United Nations resolutions and decisions on racism, racial discrimination, *apartheid*, decolonization and self-determination and related matters and to submit its suggestions and proposals to the Commission at its thirty-third session.

15. At its twenty-ninth session, in 1976, the Sub-Commission had before it the final study of the Special Rapporteur on "Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination" (E/CN.4/Sub.2/377 and Add.1-3) which was submitted to it in that year for discussion at its thirtieth session, in 1977, in accordance with the long-term programme of work decided upon at its twenty-eighth session. At the 761st meeting, upon the invitation of the Sub-Commission, the Special Rapporteur introduced his study to the Sub-Commission.<sup>6</sup> At its 763rd meeting, the Sub-Commission decided that the Special Rapporteur should update his study before submitting it for final consideration by the Sub-Commission at its thirtieth session.

16. At its thirty-first session, on 3 November 1976, the General Assembly adopted resolution 31/34, entitled "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights", in which, *inter alia*, it stated that it keenly awaited the conclusion of this study by the Sub-Commission.

17. At its thirty-third and thirty-fourth sessions, in 1977 and 1978, the Commission on Human Rights considered the item concerning the right of peoples to self-determination and its application to peoples under colonial and alien domination. During the discussion at the thirty-third session references were made to this study. In addition to references to other points dealt with in the Special Rapporteur's study, the opinion was expressed that the right of peoples to self-determination was a rule, perhaps a peremptory rule, of international law.<sup>7</sup> At the thirty-fourth session the Special Rapporteur submitted to the Commission the study in document E/CN.4/Sub.2/390 and Corr.1 and Add.1 and the recommendations asked for by the Commission's resolution 5 (XXX). During the debate on this item numerous references were again made to this study, and all the members of the Commission who spoke in the debate agreed with the view expressed by the Special Rapporteur. Some speakers expressed the wish that in future revisions of the study an analysis of some additional points which they brought to the Commission's attention should be included.<sup>8</sup>

18. The Sub-Commission began to consider this study at its thirtieth session. All the speakers who participated in the debate agreed with the opinions expressed by the Special Rapporteur and with the conclusions and recommendations in the study.<sup>9</sup> The Sub-Commission adopted, without a vote, a resolution (7 (XXX)) expressing its appreciation to the Special Rapporteur for his excellent study; decided to keep the question under review at its thirty-first session; re-

quested the Special Rapporteur to submit an updated study focusing on relevant developments in the territories listed in paragraphs 229-232 of his study; requested the Secretary-General to submit the study of the Special Rapporteur to the General Assembly at its thirty-second session, to the Commission on Human Rights, to the Special Committee on the Situation with regard to the Implementation of the declaration on the Granting of Independence to Colonial Countries and Peoples and to the Special Committee against *Apartheid*; and decided to draw to the attention of the International Law Commission for its consideration and action the recommendations of the Special Rapporteur contained in paragraph 258 of his study.

19. In paragraph 12(b) of its resolution 32/14, adopted on 7 November 1977, the General Assembly stated that it keenly awaited the publication of the study prepared by the Special Rapporteur.

20. At its thirty-third session, in 1978, the General Assembly adopted, on 29 November 1978, resolution 33/24, in which it took note of the study by the Special Rapporteur (E/CN.4/Sub.2/405 (vols. I and II)) and thanked the author for the work done.

21. At its thirty-first session, in 1978, the Sub-Commission considered the updated study by the Special Rapporteur. In introducing his new study, the Special Rapporteur made a comprehensive statement.<sup>10</sup> The Sub-Commission endorsed the points of view expressed, especially as regards the characterization of the right to self-determination as *jus cogens*.<sup>11</sup> The Sub-Commission adopted resolution 4 (XXXI) A, in which it reiterated its thanks to the Special Rapporteur for the excellent study which he had presented; decided to recommend to the Commission on Human Rights and to the Economic and Social Council that the updated study should be printed and that it should be given the widest possible circulation; requested the Secretary-General to transmit the updated study to the General Assembly at its thirty-fifth session and to the other organs listed in paragraphs 4 and 5 of its resolution 7 (XXX), and requested the Commission on Human Rights to entrust Mr. Héctor Gros Espiell with the preparation of the preliminary draft of the international instrument proposed in paragraph 288 of his study, for consideration by the Sub-Commission and, if the Commission so decided, to request the Secretary-General to provide him with all the assistance which he needed to complete his work. The Sub-Commission also adopted resolution 4 (XXXI) B.<sup>12</sup>

22. As suggested during the discussions at the twenty-seventh, twenty-eighth and twenty-ninth sessions of the Sub-Commission and at the thirty-second and thirty-third sessions of the Commission on Human Rights, the Special Rapporteur has carefully considered the relationship between his work and various other studies initiated by the Sub-Commission.

23. As has been pointed out in the debates in the Commission and the Sub-Commission, the present study is closely connected with, though distinct from, the one being prepared by Mr. A. Cristescu under Sub-Commission resolution 3 (XXVII), on "The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations

organs, with particular reference to the promotion and protection of human rights and fundamental freedoms". It is envisaged that Mr. Cristescu's study will essentially analyse the development of the basic concepts involved in self-determination, whilst the present study will deal mainly with concrete problems and specific situations in relation to the implementation of the United Nations resolutions. It is hoped that both studies will serve to promote understanding of the problems raised by the right of peoples to self-determination. Although they deal substantially with the same matters, the approaches followed by the two Special Rapporteurs in analysing the subject have been different, in accordance with their respective terms of reference. Fruitful preliminary consultations were held with Mr. Cristescu in November 1974 at Geneva. The Special Rapporteur believes that the two studies have been properly co-ordinated and that with their different approaches and their differing points of view—on some questions the two Special Rapporteurs hold different opinions which should not be concealed since these divergences enrich the studies and enhance their interest—they will form a harmonious and systematic whole.

24. There is also a relationship between the present study and the study being prepared by Mr. Ahmed M. Khalifa on "The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa". One of the main adverse consequences of such assistance is the denial of self-determination to the peoples of Namibia, South Africa and Southern Rhodesia.

25. It is often—and might even be said to be necessarily—the case in practice that the denial of the right of self-determination to peoples under colonial and alien domination is associated with racial discrimination, the population of the dominating Power being of a different colour from that of the subject population. In this respect, there is also a close connexion between the present study and the recently updated study on racial discrimination by Mr. Hernán Santa Cruz.<sup>13</sup>

26. Similarly, there is a connexion between this study and the study by Mr. Francesco Capotorti entitled "Study of the rights of persons belonging to ethnic, religious and linguistic minorities",<sup>14</sup> for the relationship between the minority or minorities and the population as a whole as regards the question of the right to self-determination is a specially complex question. The subject was raised during the thirty-fourth session of the Commission on Human Rights, and the Special Rapporteur is proposing to give his views on the matter in the final version of the study which he will submit for publication.

27. The Special Rapporteur has given particular consideration to points (a), (b) and (c) mentioned in paragraph 13 above, regarding which the Commission on Human Rights, at its thirty-second session, in 1976, considered that it was desirable to make a special analysis.

28. Although it was not possible for him to analyse all the various questions mentioned by the speakers, the Special Rapporteur has dealt more fully with or

made particular reference to a number of topics in compliance with wishes expressed by the Commission at its thirty-third session.

## **B. Methodology used in the preparation of the study**

29. In accordance with his mandate, set out in Commission resolution 5 (XXX), to analyse the report of the Secretary-General (E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1) the Special Rapporteur considered that his main sources of information were the texts of United Nations resolutions summarized in that report, as well as those adopted after the issuance of the last study. Indeed, practically all measures taken by the United Nations and the specialized agencies in implementation of their resolutions concerning self-determination are themselves expressed in the form of resolutions, recommendations or decisions.<sup>15</sup> The Special Rapporteur is fully aware of, but has not analysed, debates in United Nations bodies which did not lead to the adoption of resolutions. Matters which were the subject of resolutions in international organizations outside the United Nations system were not considered either except when there was also a United Nations resolution in respect of the same territory or situation.

30. Aside from resolutions of a general character on self-determination, the Special Rapporteur considered that he should take into account resolutions concerning all the individual countries and territories and the specific cases dealt with in the Secretary-General's report. In doing so, the Special Rapporteur drew a distinction between territories in respect of which questions of implementation continue to be raised in United Nations resolutions adopted before or since the issuance of the Secretary-General's report, and those which are no longer referred to in United Nations resolutions because the questions of self-determination which they raised have been settled.

31. In addition to the texts of United Nations resolutions, the Special Rapporteur considered that it would be useful to have information and views on the implementation of the resolutions from Governments, certain United Nations bodies, specialized agencies and regional intergovernmental organizations. Accordingly, on 9 December 1974 and 17 October 1975, at the request of the Special Rapporteur, the Secretary-General sent notes verbales to Governments of States Members of the United Nations, members of the specialized agencies, Parties to the Statute of the ICJ and members of IAEA, requesting information and views on: (a) the meaning of the concept "the right to self-determination" from the point of view of the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; (b) the meaning of the term "peoples under colonial and alien domination" from the point of view of the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; (c) information and suggestions concerning the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; (d) bibliographical infor-

mation on the right to self-determination and its implementation.

32. On 9 December 1974 and on 17 and 24 October 1975, the Secretary-General sent letters, requesting similar information and views to ECA, ECE, ECLA, ECWA, ESCAP, FAO, the ILO, UNCTAD, UNDP, UNESCO, UNIDO, WHO, CMEA, the Council of Europe, the League of Arab States, OAU, OAS and the Asian-African Legal Consultative Committee. Other United Nations organs and specialized agencies were requested to supply information of the same nature for the purposes of the final study.

33. On 18 February 1975, the Special Rapporteur wrote to Mr. Salim A. Salim, Chairman 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, Mr. Edwin Ogebe Cgbu, Chairman of the Special Committee against *Apartheid*, Mr. Rashleigh E. Jackson, President of the United Nations Council for Namibia, and Mr. Sean MacBride, United Nations Commissioner for Namibia, requesting information and views on the subject.

34. As at 9 April 1976, replies has been received from the Governments of Afghanistan, Bulgaria, Colombia, Gabon, the German Democratic Republic, Iraq, Kenya, Mexico, Morocco, New Zealand, Nicaragua, Pakistan, the Philippines, Spain, Thailand and the Union of Soviet Socialist Republics. Replies had also been received from ECA, ECE, ECLA, ECWA, ESCAP, UNCTAD, UNIDO, the United Nations Commissioner for Namibia, FAO, the ILO, WHO, the Council of Europe, OAS, the League of Arab States and the Asian-African Legal Consultative Committee.

35. The Special Rapporteur is fully aware of the importance that the replies to the questions and the views requested (see the foregoing paragraphs) will have for his study. At the time of writing of this study, the replies received, although in some cases important, were not sufficient in number to permit a general comparative study to be made or any conclusions to be drawn. The Special Rapporteur considers that these replies, in particular those from Governments of States involved in the specific situations mentioned in the report of the Secretary-General,<sup>16</sup> are of outstanding interest and that a truly exhaustive report on the subject should necessarily include an examination of a large number of replies.

36. Despite the small number of replies received, the Special Rapporteur has given due attention to analysing the concepts on which government opinion was sought under (a) and (b) of the notes verbales of 9 December 1974 and 17 October 1975. He has felt it necessary to express his own views on these matters as well, in order to define the scope of the present study. The replies to the request made under (c) of the notes verbales have been used in analysing the actual situation in specific territories and in formulating suggestions for future action to achieve full implementation of the right of peoples under colonial and alien domination to self-determination.

37. From 10 to 20 February 1975, from 31 March to 7 April 1976, 9 to 14 May 1977 and from 10-20 February 1978, the Special Rapporteur visited United

Nations Headquarters and studied the resolutions and most recent documents produced by United Nations organs concerned with the subject-matter of this study. He also held various consultations.

38. The Special Rapporteur has had difficulty in drafting the present study owing to the enormous quantity of documents which he has had to handle and study. Because of the variety of United Nations organs which deal with matters connected with the right of peoples to self-determination, and the work also being done by specialized agencies, the orderly treatment of all this material is an extremely complex undertaking. The Special Rapporteur wishes to acknowledge the competence and spirit of co-operation shown by the Secretariat, which has given him every possible assistance in the preparation of his study.

39. The Special Rapporteur is of the opinion that the final study would be more valuable if it contained an annex giving a complete list, arranged chronologically and by subject, of the resolutions on the right of peoples under colonial and alien domination to self-determination which have been adopted by the various United Nations organs and are referred to in this study.

40. The Special Rapporteur also believes that it would be highly useful to publish a bibliography on the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination. Annexed to this study is a bibliography compiled from information supplied by the United Nations Library and by the Governments of the German Democratic Republic, New Zealand, Pakistan and the Union of Soviet Socialist Republics, and from material which the Special Rapporteur has obtained as a result of his personal research. The Special Rapporteur feels certain that this bibliography will be useful, although he realizes that it is not exhaustive and could and should be expanded.

41. In the present study, appropriate treatment is given to the most widely accepted views of legal theorists on the questions under consideration. In the time available to him, the Special Rapporteur has been unable to include in the final version of the Study such full references as would have been desirable. However, precise and necessary references are given to the resolutions and other documents of the United Nations, since they are naturally the fundamental and decisive element in the preparation of this study.

### **C. Meaning of the expression "right of peoples under colonial and alien domination to self-determination"**

42. In accordance with the previously mentioned resolutions of the Commission on Human Rights, the Economic and Social Council and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the object of the present study is to consider the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination. The study is required to be based on the Secretary-General's report, which contains an annotated collection of the resolutions relating to the right of peoples under colonial and alien domination to self-determination.<sup>17</sup> Accord-

ingly, the Special Rapporteur's mandate does not cover every matter connected with the right of peoples to self-determination, but extends only to those cases, as referred to in the Secretary-General's report, which involve peoples under colonial and alien domination. This point is made in order to indicate the limits of the present study.

43. In order to clarify what is meant by the term "peoples under colonial and alien domination", the Special Rapporteur requested the views of the Governments and bodies referred to in paragraphs 31, 32 and 33 above as to the meaning of those words from the point of view of the implementation of the relevant United Nations resolutions. In their replies, the Governments of Mexico,<sup>18</sup> Afghanistan,<sup>19</sup> the German Democratic Republic,<sup>20</sup> Iraq,<sup>21</sup> the Philippines<sup>22</sup> and New Zealand,<sup>23</sup> and E.C.A.<sup>24</sup> have stated what they consider the term to mean. At the thirty-third session of the Commission on Human Rights, 1977, the representative of Pakistan expressly stated his Government's interpretation of this concept, an interpretation which generally accords with the views given in the above-mentioned replies, though it also specifically excludes the right of secession "unless the association in question had been accomplished illegally against the wishes of the people concerned".<sup>25</sup>

44. The Special Rapporteur refers to this specific subject of secession in another part of his study (see para. 90). Despite their variations, these replies reveal a common view which the Special Rapporteur shares: that "colonial and alien domination" means any kind of domination, whatever form it may take, which the people concerned freely regards as such. It entails

denial of the right to self-determination, to a people possessing that right, by an external, alien source. Conversely, colonial and alien domination does not exist where a people lives freely and voluntarily under the legal order of a State, whose territorial integrity must be respected, provided it is real and not merely a legal fiction, and in this case there is no right of secession.

45. Accordingly, the right of peoples to self-determination exists as such in modern international law, with all the consequences that flow therefrom, where a people is subject to any form or type of colonial and alien domination of any nature whatsoever. In keeping with what is stated in the foregoing paragraph, the notion of colonial and alien domination is broader than — though it includes — the notion of foreign occupation, and hence the right of peoples to self-determination may arise and be typified in other situations in addition to those where there is merely foreign occupation. Clearly, however, the foreign occupation of a territory — an act condemned by modern international law and incapable of producing valid legal effects or of affecting the right to self-determination of the people whose territory has been occupied — constitutes an absolute violation of the right to self-determination. Every people subject to any form or type of colonial or alien domination possesses the right to self-determination, and no distinction can be drawn between one people and another for the purpose of recognizing the existence of this right if there is the necessary evidence of colonial or alien domination of the people or peoples in question.

#### FOOT-NOTES TO THE INTRODUCTION

<sup>1</sup> E/CN.4/Sub.2/L.626.

<sup>2</sup> A fuller report of the Special Rapporteur's introductory statement appears in the summary record of the 726th meeting (E/CN.4/Sub.2/SR.715-731, 733-735/Add.1 and 736-742).

<sup>3</sup> See the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-eighth session (E/CN.4/1180), annex II, p. 2.

<sup>4</sup> See *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 77, document A/10309; *ibid.*, Third Committee, summary records of the 2124th - 2132nd meetings, and the provisional verbatim record of the 2400th plenary meeting of the General Assembly (A/PV.2400).

<sup>5</sup> See *Official Records of the Economic and Social Council, Sixtieth Session, Supplement No. 3 (E/5768)*, paras. 36-43, and E/CN.4/SR.1342-1345.

<sup>6</sup> For an account of the Special Rapporteur's statement, see the summary record of the 761st meeting (E/CN.4/Sub.2/SR.761).

<sup>7</sup> See *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6 (E/5927)*, para. 136.

<sup>8</sup> For a summary of the Special Rapporteur's statement, see the summary record of the 1438th meeting (E/CN.4/SR.1438). For statements on the study made in the Commission by the Director of the Division of Human Rights and various members of the Commission, see E/CN.4/SR.1431, para. 6; E/CN.4/SR.1433, para. 17; E/CN.4/SR.1435, paras. 12-14; E/CN.4/SR.1436, paras. 47-49; E/CN.4/SR.1437, paras. 25-27 and E/CN.4/SR.1438, para. 8. See also *Official Records of the Economic and Social Council, 1978, Supplement No. 4 (E/1978/34)*, paras. 121-125.

<sup>9</sup> See the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirtieth session (E/CN.4/1261), chap. XII and resolution 7 (XXX).

<sup>10</sup> See E/CN.4/Sub.2/SR.813.

<sup>11</sup> See the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-first session (E/CN.4/1296), paras. 163-172.

<sup>12</sup> *Idem*, p. 60.

<sup>13</sup> *Racial Discrimination: study by Hernán Santa Cruz, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Revised and updated version, 1976* (United Nations publication, Sales No. E.76.XIV.2).

<sup>14</sup> E/CN.4/Sub.2/384 and Add.1-7.

<sup>15</sup> In the present study, the word "resolutions" has been understood in a broad sense as including every kind of formal decision taken by United Nations bodies, regardless of its technical designation.

<sup>16</sup> E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1.

<sup>17</sup> *Idem*.

<sup>18</sup> "Mexico deems it necessary to state that it understands 'peoples under alien domination' to mean peoples with territories which have been occupied through the use of armed force, in contravention of the United Nations Charter, or in which neo-colonialism has prevented the people or country concerned from following a course of its own. As regards the scope of this definition, emphasis should be placed on the importance, for the struggle against economic colonialism, of the Charter of Economic Rights and Duties of States recently adopted by the United Nations General Assembly, which has been recognized as a vital first step towards eliminating anarchy and injustice in economic relations between States."

<sup>19</sup> "'Alien domination' is understood as covering all forms of domination, both direct and indirect, regarded or declared

'alien' by peoples of any area and which constitutes an impediment or a suppressive factor in the realization of their fundamental freedoms and human rights, as enshrined in the United Nations Charter and the Universal Declaration of Human Rights."

<sup>20</sup> "According to the view of the German Democratic Republic, the term 'peoples under colonial and alien domination' means nations and peoples which are prevented by a foreign imperialist power employing political, economic or military coercion from exercising their right to self-determination, or whose right to self-determination is impaired otherwise. The term covers in particular peoples or larger groups of people on whom a fascist, colonialist or racist rule is imposed. It also applies to peoples or larger groups of people whose territory has been illegally occupied or annexed by an aggressor. The victims of the various forms of imperialist oppression are entitled to resist with all available means and make use of the support from the international community in implementing their right to self-determination."

<sup>21</sup> "The term 'peoples under colonial and alien domination' is distinguished by the presence of a foreign element which leads to economic exploitation in many cases. The relationship being based on the foreign element is a result of historical, geographical and cultural factors, and imperialistic relationships are always identified by exploitation and engaging the colonized people to serve the interests and objectives of the colonizing country."

<sup>22</sup> "The Philippine Government considers the term 'peoples under colonial and alien domination' to mean peoples residing in territories or areas who have not attained sovereign status and who all within the jurisdiction of the United Nations trusteeship system as enumerated in Article 77 of the United Nations Charter, as well as those non-self-governing peoples within the purview of Article 73 of the United Nations Charter."

<sup>23</sup> "The New Zealand Government does not consider that

the concept of a people being under 'colonial and alien domination' can be defined comprehensively. Primarily the decision as to whether people are under colonial or alien domination must rest with the people concerned. The international community should be receptive to the stated wishes of such a people, and should assist in securing change where change is sought, or accept a situation where the people concerned find the relationship benevolent and mutually satisfactory. It is recognized, however, that the international community has other responsibilities under the Charter in maintaining international peace and security and in refraining from interference in the affairs of another State. The borderline between the rights of a people under colonial and alien domination and the duties of the international community to acknowledge those rights cannot be stated as a general principle, since each situation is different and must be considered on its own merits."

<sup>24</sup> "... its views on the term 'peoples under colonial and alien domination'. In this connexion, due regard is paid to the list drawn up by the Special Committee of Twenty-four identifying the Territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples applies and account is also taken of the views of the Organization of African Unity and its Liberation Committee based at Dar-es-Salaam. More specifically, the decisions of the General Assembly and the Economic and Social Council regarding the status and representation in the United Nations of peoples under colonial domination have been reflected in the terms of reference of the Commission and in the various resolutions adopted by it".

<sup>25</sup> "... for Pakistan, that expression meant clearly that the right of self-determination was applicable to all peoples whose freedom had been illegally suppressed by external forces, near or far, but that that freedom did not include secession of a part of a State unless the association in question had been accomplished illegally against the wishes of the people concerned". (E/CN.4/SR.1411, para. 4.)

## Chapter I

### SOME QUESTIONS CONCERNING THE DEFINITION, SCOPE AND LEGAL NATURE OF THE RIGHT OF PEOPLES UNDER COLONIAL AND ALIEN DOMINATION TO SELF-DETERMINATION

46. The Special Rapporteur shares the view of the drafting group appointed by the Sub-Commission at its twenty-sixth session, in 1973, that the modern concept of self-determination encompasses legal, political, economic, social and cultural aspects.<sup>1</sup> Article 1 of the International Covenant on Civil and Political Rights states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". In other words, as far as the International Covenants on Human Rights are concerned, the right to self-determination necessarily has political, legal, economic, social and cultural implications. The same formulation appears in paragraph 2 of resolution 1514 (XV). Hence the International Covenants on Human Rights and the Declaration contained in resolution 1514 (XV), as well as many other United Nations resolutions, affirm and recognize the multifaceted, composite nature of the right of peoples to self-determination. Thus conceived, therefore, this right includes political, economic, social and cultural aspects.<sup>2</sup> For the right to be fully effective, the existence of all these elements is required.

47. The implementation of the right of peoples to self-determination involves not only the completion of the process of achieving independence or other appropriate legal status by the peoples under colonial and alien domination, but also the recognition of their right to maintain, assure and perfect their full legal, political, economic, social and cultural sovereignty. The right of peoples to self-determination has lasting force,<sup>3</sup> does not lapse upon first having been exercised to secure political self-determination and extends to all fields, including of course economic, social and cultural affairs. Many countries which no longer suffer from colonialism in the classic and traditional sense continue to suffer from neo-colonialism and imperialism in their various forms. The Special Rapporteur therefore considers it extremely important to make that point clear about the concept of self-determination.

48. The right of peoples to self-determination is enshrined in the Charter of the United Nations;<sup>4</sup> the International Covenants on Human Rights;<sup>5</sup> numerous and repeated resolutions of the United Nations General Assembly;<sup>6</sup> the momentous and historic Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly on 14 December 1960 in its resolution 1514 (XV), which has been termed the Magna Carta of decolonization and which marks the beginning of the modern attitude to the subject and of the irreversible trend towards full decolonization; the Declaration on the Inadmissibility

of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty;<sup>7</sup> the Declaration on the Strengthening of International Security;<sup>8</sup> the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;<sup>9</sup> the Definition of Aggression;<sup>10</sup> the resolutions on permanent sovereignty over natural resources;<sup>11</sup> the resolutions on the International Development Strategy for the Second United Nations Development Decade and on the establishment of a new international economic order;<sup>12</sup> the Charter of Economic Rights and Duties of States;<sup>13</sup> the Declaration on Social Progress and Development;<sup>14</sup> and many other United Nations instruments.

49. It is not the Special Rapporteur's intention to present at this point a full list of these instruments or to analyse them. However, many of the provisions contained in the above-mentioned instruments, and in other resolutions relating to the right of peoples to self-determination, will be cited in the present study. A thorough and systematic analysis of them would go beyond the scope of the study, and in any case such an analysis has been made in part by Mr. Cristescu in his preliminary study.<sup>15</sup>

50. The Special Rapporteur merely wishes to stress here the importance which recognition, declaration and reaffirmation of the right of peoples to self-determination has had and still has in the work of the United Nations. This is one of the spheres in which the Organization's achievements are unanimously acknowledged to be of outstanding value and of historic significance.<sup>16</sup> The affirmation and implementation by the United Nations of the right of peoples to self-determination brought about the crisis of colonialism and set in motion the process of its universal elimination. What in the Covenant of the League of Nations and in the international law of that era was a principle, as is the case with nationalities, applicable preferentially or, rather, almost exclusively in Europe, which did not imply the rejection of colonialism in Africa, Asia and Latin America,<sup>17</sup> what in the Charter of the United Nations was only the mention of a principle in Articles 1 (paragraph 2) and 73, was transformed, as a result of the work done by the Organization from 1952 onwards, but more particularly since 1960, into a basic principle, of universal applicability, into a right of all peoples and into a peremptory norm of international law which, with the end of the traditional colonialism — save for a few surviving remnants — led to a complete change in international society.

51. As is stated in paragraph 1 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, "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 co-operation". Much the same language occurs in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

52. Each of the International Covenants on Human Rights adopted by the General Assembly and opened for signature and ratification on 16 December 1966,<sup>18</sup> and in force since 1976, states in article 1, paragraph 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The inclusion in the two International Covenants on Human Rights of a provision on the right of peoples to self-determination was decided on by the Commission on Human Rights in 1952,<sup>19</sup> in accordance with General Assembly resolution 545 (VI), and in 1955 by the Third Committee of the General Assembly.<sup>20</sup> This led to the drafting of the text contained in article 1 of the two Covenants.<sup>21</sup> The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations reproduces almost textually the formulation used in the two International Covenants on Human Rights. The critical attitude shown by a considerable body of legal opinion in the 1950s towards the inclusion of the self-determination of peoples in the two International Covenants on Human Rights, an attitude based on a denial of the legal character of the principle of self-determination of peoples or on the essential difference in nature between this "right of peoples" and human rights,<sup>22</sup> has already been overcome. For contemporary international law, for current legal theory, as well as for certain writers who can be regarded as forerunners in this field,<sup>23</sup> the self-determination of peoples, in addition to being a principle of international law, is a right of peoples under colonial and alien domination and a condition or prerequisite for the existence and enjoyment of all the other rights and freedoms of the individual. The Special Rapporteur will analyse these points in the succeeding paragraphs.

53. The Proclamation of Teheran, adopted on 13 May 1968 by the International Conference on Human Rights at Teheran, states in paragraph 9 that the survival of colonialism is having a negative effect on the recognition and enjoyment of human rights, and resolution VIII<sup>24</sup> affirms the inescapable relation between realization of the right to self-determination and recognition and effective observance of human rights. As is implicit in the texts cited and in the preamble to the two International Covenants on Human Rights, the effective exercise of the right to self-determination constitutes one of the "conditions" required to enable everyone to enjoy his economic, social and cultural rights and his civil and political rights.

54. In its resolution 3 (XXXI), of 11 February 1975, the Commission on Human Rights recognized "the particular importance for the realization of human

rights of the application of the principle of the right of peoples to self-determination". In its discussions, the Commission has repeatedly pointed out that self-determination is a right of the individual and a prerequisite for the exercise of other rights and freedoms.<sup>25</sup>

55. From the United Nations instruments cited in the last four paragraphs it is clear that the right of peoples under colonial and alien domination to self-determination has been conceptualized as a right of the individual, as a condition or prerequisite for the genuine existence and the exercise of the other human rights and freedoms and as a right of peoples under colonial and alien domination — all without prejudice to its being at the same time a basic principle of international law of a peremptory character. In the succeeding paragraphs the Special Rapporteur will endeavour to define and delimit the concept of self-determination in each of these cases, that is to say, as a basic human right, as a condition for the other rights and freedoms, as a right of peoples under colonial or alien domination and as a peremptory principle of international law.

56. Self-determination is essentially a right of peoples.<sup>26</sup> The divergence of opinion among legal theorists which existed on this point until a few years ago has been overcome; the Declaration adopted in resolution 1514 (XV) and the International Covenants on Human Rights have provided the basis for unquestioned acceptance in international law of the fact that self-determination is a right of peoples under colonial and alien domination. To characterize self-determination as a collective right<sup>27</sup> possessed by peoples raises awkward theoretical problems, because of the difficulty of defining the concept of a people and drawing a clear distinction between that and other similar concepts. Self-determination of peoples is a right of peoples, in other words of a specific type of human community sharing a common desire to establish an entity capable of functioning to ensure a common future. It is Peoples as such which are entitled to the right to self-determination. Under contemporary international law minorities do not have this right. People and Nation are two closely related concepts; they may be one and the same, but they are not synonymous. Modern international law has deliberately attributed the right to Peoples, and not to Nations and States. However, when the People and the Nation are one and the same, and when a People has established itself as a State, clearly that Nation and that State are, as forms or manifestations of the same People, implicitly entitled to the right to self-determination. There is no doubt that the theoretical and practical difficulties involved in these concepts are very great and the Special Rapporteur cannot possibly make a thorough and conclusive analysis of these concepts. All he can do is to make clear his ideas on the subject, even if they are only his first thoughts and presented in summarized form. Apart from such difficulties, however, it is evident that, both politically and practically, the right of peoples to self-determination is one of the major realities of the present day and that the invocation and recognition of this right have radically changed international society as it existed until a few years ago. In their replies, the Government of the Philippines stated that a minority or a foreign State cannot invoke the right of

self-determination, and the Government of Iraq stressed the need to distinguish between peoples and minorities, since only peoples possess the right of self-determination. The reply of the Government of the German Democratic Republic gave a full analysis of the reasons why all peoples should be recognized as possessing it.

57. To assert that self-determination constitutes a collective right of peoples does not mean that an individual right, to which all human beings are entitled, cannot exist at the same time. A right can be simultaneously an individual right and a collective right. The presumed incompatibility between the two types of rights is inadmissible. This conclusion, already recognized, for instance, with respect to the right to development, the right to form trade unions and the right to freedom of information, is perfectly applicable to the case of the right to self-determination.

58. In the Special Rapporteur's judgement, it is important likewise to try to conceptualize the right to self-determination as a right of the individual. The Commission on Human Rights has repeatedly invoked it as such, without giving a precise reason for that conception and without distinguishing self-determination as a right of the individual from self-determination as a condition or prerequisite for the effective exercise of the other rights and freedoms. In the Special Rapporteur's view, self-determination may be regarded also, as a consequence or its initial recognition, as a right of peoples, as a right of the individual, in that it is every person's right that the people of which he is a member — if it is under colonial and alien domination — should be recognized as having the right to determine freely its own political, economic, social and cultural condition. The Special Rapporteur considers, moreover, that self-determination as a right of the human being is a consequence of the necessary recognition of the political rights of citizens and of the civil, economic, social and cultural rights of all individuals without any discrimination. The self-determination of citizens, individually, on the basis of the recognition of their political rights, is a prerequisite of the effective realization of self-determination as the people's collective right. This view is referred to in paragraph 284 of this study.<sup>30</sup>

59. In addition, however, the effective exercise of a people's right to self-determination is an essential condition or prerequisite, although not necessarily excluding other conditions, for the genuine existence of the other human rights and freedoms. Only when self-determination has been achieved can a people take the measures necessary to ensure human dignity, the full enjoyment of all rights, and the political, economic, social and cultural progress of all human beings, without any form of discrimination. Consequently, human rights and fundamental freedoms can only exist truly and fully when self-determination also exists.<sup>31</sup> Such is the fundamental importance of self-determination as a human right and a prerequisite for the enjoyment of all the other rights and freedoms. It is with awareness and appreciation of these characteristics of self-determination that the Special Rapporteur has approached the present study.

60. The United Nations has established the right of self-determination as a right of peoples under colonial and alien domination. The right does not

apply to peoples already organized in the form of a State which are not under colonial and alien domination, since resolution 1514 (XV) and other United Nations instruments condemn any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country. If, however, beneath the guise of ostensible national unity, colonial and alien domination does in fact exist, whatever legal formula may be used in an attempt to conceal it, the right of the subject people concerned cannot be disregarded without international law being violated. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)) uses particularly apt language in spelling out this idea: it reaffirms the need to preserve the territorial integrity of sovereign and independent States, but ties this concept to the requirement that the States must be "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

61. This right of peoples gives rise to the corresponding duty of all States to recognize it and to promote it.<sup>32</sup> The international community and all States not only have a legal duty to refrain from opposing and impeding the exercise of the right to self-determination, but also are under a positive obligation to help in securing its realization, by promoting its exercise and by co-operating in every possible way to ensure that peoples under colonial and alien domination achieve their independence and that those peoples which have already become independent as a result of exercising their right to self-determination achieve their complete sovereignty and full development. These considerations have a particular bearing on the question of the legitimacy of the use of force to achieve self-determination, and the corresponding duty to display solidarity. The Special Rapporteur will pay special attention to this in paragraph 93.

62. The right of peoples under colonial and alien domination to self-determination is not contingent on any kind of condition or requirement. In particular, resolution 1514 (XV) precludes any opposition to the exercise of the right to self-determination on the pretext that a people has not reached a sufficiently high level of development to lead an independent existence.<sup>33</sup>

63. Peoples under colonial and alien domination accordingly have rights and obligations conferred by contemporary international law. They therefore possess an international personality and as regards the exercise of their rights and the performance of their duties can be regarded as subjects of international law.<sup>34</sup> Clearly, not all subjects of law have the same status, nor are their rights and duties identical.<sup>35</sup> That is why the view that peoples are now, within the limits indicated above, subjects of law is tenable.

64. The national liberation movements of peoples struggling against colonial and alien domination, which have been recognized by the United Nations as legitimate representatives of those peoples, also possess, with the same limitations, that character. The Special Rapporteur will refer to these movements further on.

65. The exercise and implementation of the right of peoples to self-determination presupposes the free

and genuine expression of their will. This is implicit in paragraph 2 of resolution 1514 (XV) and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)), which provides that colonialism is to be brought to an end "having regard to the freely expressed will" of the people, and has been asserted with particular emphasis by the International Court of Justice;<sup>36</sup> it is a point of outstanding importance because it means that the will of the people must be expressed through popular consultation accompanied by all the safeguards necessary to ensure freedom of expression for the people concerned. As the Court remarked, the validity of this assertion is not affected by United Nations dispensations, which have been based either on the conviction that such a consultation was unnecessary in a particular case or on special circumstances.<sup>37</sup> A people under colonial and alien domination is unable to express its will freely in a consultation, plebiscite or referendum organized and controlled exclusively by the colonial and alien power. Only when it is really and genuinely free is the expression of a people's will capable of determining the politico-international status of the people in question.

66. A necessary consequence of recognition of the right of peoples under colonial and alien domination to self-determination is the rejection and condemnation of colonialism in all its forms and manifestations. Under contemporary international law, colonialism is an international crime expressly characterized as such.<sup>38</sup> The criminal character of colonialism and of the acts by which it is practised calls for emphasis, because of its special significance and implications.

67. Self-determination is also a principle which has been characterized as a basic principle of international law and has been included as such in the Declaration adopted by the General Assembly in resolution 2625 (XXV).<sup>39</sup> It is a principle of enormous importance for contemporary international law since it affects practically all the issues at present arising in the law of nations.<sup>40</sup>

68. For example, as regards the succession of States in respect of treaties, application of the principle of self-determination has ruled out the traditional solutions and made it necessary to adopt provisions preventing the automatic imposition on the new State of obligations arising out of its former colonial status.<sup>41</sup>

69. In this connexion, it should be emphasized that, especially on the basis of resolution 1514 (XV), all titles which established or were held to establish sovereignty or dominion over a colonized territory have lapsed, inasmuch as they conflict with the principle of the right of peoples under colonial and alien domination to self-determination. Under the new international order now applicable all former colonial titles, deriving from the old obsolete international law, have ceased to exist. Today by virtue of so-called "inter-temporal law" all these situations can be resolved solely through application of the consequences of recognition of the right of peoples to self-determination.<sup>42</sup>

70. The exceptional importance of the principle of the self-determination of peoples in the modern world

is such that today the principle has been held to constitute an example of *jus cogens*, that is, a "peremptory norm of general international law", to quote the expression used in article 53 of the Vienna Convention on the Law of Treaties.

71. In 1963, in the International Law Commission's commentary to article 37 of the draft articles on the law of treaties, it was mentioned that the principle of self-determination could be cited as an example of *jus cogens*. However, since the Commission decided against including any examples of *jus cogens* in the article itself, the reference to self-determination appears solely in the report.<sup>43</sup> The Commission reiterated its comments when article 37 became article 50 of the later draft.<sup>44</sup> When the draft articles prepared by the International Law Commission were subsequently discussed in the Sixth Committee of the General Assembly, various speakers, including the representatives of Czechoslovakia, Pakistan, Peru, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics, expressed support for the view that the principle of self-determination had the character of *jus cogens*.<sup>45</sup>

72. It is highly significant that the only expression of opposition to according the character of *jus cogens* to the principle of self-determination came from the then Government of Portugal, which in 1964 stated: "Nor does it believe that much would be gained by including a number of cases which constitute offences against international law or other acts violating human rights or the principle of self-determination, since it considers that these concepts have been debased by realities, so that any mention of them would not help to free them from the crisis through which they are passing".<sup>46</sup>

73. Statements similar to those in the International Law Commission were made at the first session of the United Nations Conference on the Law of Treaties.<sup>47</sup> The omission of examples from the text which later became article 53 of the Vienna Convention on the Law of Treaties certainly did not mean a denial of the character of *jus cogens* to the cases mentioned during the drafting of the articles; it simply arose from a desire to leave the question open so that the content of *jus cogens* could "be worked out in State practice and in the jurisprudence of international tribunals".<sup>48</sup> This is the right approach, since, without prejudice to the possible existence of other means of determining the content of *jus cogens*, it implies that this content is not static or fixed but takes shape and evolves according to the criteria and principles accepted by the international community as a whole at any particular time in its historical development.<sup>49</sup>

74. The idea that the content of *jus cogens* is subject to change and variation, as a result of the process of evolution of the concepts accepted and recognized as forming part of it by the international community as a whole, is admitted in article 53 of the Vienna Convention on the Law of Treaties, inasmuch as it stipulates that a norm of *jus cogens* "can be modified only by a subsequent norm of general international law having the same character", and in its article 64, which admits the possibility that a new peremptory norm of general international law may emerge. Today

no one can challenge the fact that, in the light of contemporary international realities, the principle of self-determination necessarily possesses the character of *jus cogens*.

75. The question was discussed incidentally at the twenty-fifth session of the General Assembly, during the preparation of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)). The representative of Iraq maintained that the fundamental principles of international law contained in the Declaration, which include the principle of self-determination of peoples, could be considered as true rules of *jus cogens*.<sup>50</sup> This interpretation was contested by the representative of the Netherlands, who took the view that the Declaration was heterogeneous and could not be spoken of in terms of *jus cogens*.<sup>51</sup> That was basically the opinion which had been expressed by the representative of the United States of America in the Special Committee.<sup>52</sup> The terms of the discussion have moreover been commented on in the literature.<sup>53</sup> In the view of the Special Rapporteur, even if it is accepted that the Declaration, which includes desiderata as to the content of future international law, is heterogeneous, and thus not of the nature of *jus cogens* in every one of its propositions, the fundamental principles of the Charter embodied in it—and hence the principle of self-determination of peoples—as enunciated in General Assembly resolution 2625 (XXV), are nevertheless of the nature of *jus cogens*. The principles in question are described as “basic” in the Declaration itself and are referred to in like terms in paragraph 3 of the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations<sup>54</sup> and in paragraphs 2 to 6 of the Declaration on the Strengthening of International Security;<sup>55</sup> these are three fundamental documents adopted without opposition on the occasion of the twenty-fifth anniversary of the Organization. Leaving aside the supplementary formulations, the consequences and the corollaries which are set out in a heterogeneous manner under each of these principles in the Declaration adopted in resolution 2625 (XXV), the principles themselves constitute contemporary manifestations of what in contemporary international law are rules of *jus cogens*.

76. The idea that the principle of self-determination has this character and is thus at the very summit of the legal hierarchy has already begun to make progress in jurisprudence,<sup>56</sup> although it does not yet command unanimous acceptance.<sup>57</sup>

77. It is important to point out that acceptance of the idea of the existence of *jus cogens* is not, generally speaking, associated with a particular school of legal thought and that writers of differing theoretical tendencies at present accept the existence of peremptory norms of international law.<sup>58</sup>

78. In present-day legal theory the idea that self-determination is a case of *jus cogens* is widely supported, whether because it is held that the character of *jus cogens* is an attribute of the principle of self-determination of peoples<sup>59</sup> or because it is considered that this right, being a condition or prerequisite for the exercise and effective realization of human rights,

possesses that character as a consequence thereof.<sup>60</sup> Contrary opinions or, rather, those which do not include self-determination among the cases of *jus cogens*, seem to be in the minority at present.<sup>61</sup>

79. In 1976 the International Law Commission, in its draft articles on State responsibility, approved an article characterizing as an international crime “a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination”.<sup>62</sup>

80. This provision originated in Professor Roberto Ago’s draft, which characterized as an international crime “the serious breach by a State of an international obligation established by a norm of general international law accepted and recognized to be essential by the international community as a whole and having as its purpose: (a) Respect for the principle of the equal rights of all peoples and of their right of self-determination”.<sup>63</sup> In spite of the change of wording and although Professor Ago’s formulation is clearer, more precise and more radical, the International Law Commission has agreed that violation of the right of peoples to self-determination is a most serious offence, an international crime, and has thus tacitly admitted that this principle is one of the cases which in contemporary international law can be characterized as *jus cogens*.

81. In the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1976, various experts, when referring to the two studies in course of preparation, maintained that the right of peoples to self-determination possesses the character of *jus cogens*. In 1977, when this study was first considered, the subject was dealt with at considerable length, and Mr. Ortiz Martín, Mr. Caicedo Perdomo, Mr. Navarro Richardson, Mr. Dadiani, Mr. Cassese, Mr. Yusef and the Representative of the Palestine Liberation Organization expressly affirmed the character of *jus cogens* of the principle of the self-determination of peoples. In 1978, Mr. Amadeo, Mr. Holguín Holguín, Mr. Martínez Cobo, Mr. Dadiani, Mr. Singhvi, Mr. Abu Sayeed, Mr. Pizada, Mr. Jimeta and the Observer for Iraq expressed the same opinion.<sup>64</sup>

82. In the Commission on Human Rights, in 1977, when the studies by the two Special Rapporteurs were considered, the representative of the Syrian Arab Republic shared the point of view of the Special Rapporteur who prepared the present study to the effect that the right of peoples to self-determination is a case of *jus cogens*.<sup>65</sup> The Commission’s report also makes special reference to this question.<sup>66</sup> In 1978, at the Commission’s thirty-fourth session, approval was expressed repeatedly for the view that the right of peoples to self-determination should be regarded as one of *jus cogens*.<sup>67</sup>

83. In its Programme of Action, the World Conference to Combat Racism and Racial Discrimination (Geneva, 14-25 August 1978) called upon all Governments to adopt at the national level, *inter alia*, the following measure: “The encouragement through national legislation of the use, by national courts and institutions, of instruments of the United Nations and

specialized agencies related to racism and racial discrimination, especially as the principle of non-discrimination has become an imperative norm of international law;" (sect. A, para. 1 (iv)). At the international level, the Conference recommended that "the United Nations Institute for Training and Research should organize an international colloquium on the prohibition of *apartheid*, racism and racial discrimination and the achievement of self-determination in international law, paying special attention to the principles of non-discrimination and self-determination as imperative norms of international law" (sect. B, para. 29).<sup>68</sup>

84. The Special Rapporteur must not conceal his theoretical viewpoint, which bases *jus cogens* on admission of the existence of natural law. In other words, he considers that the *raison d'être* of a *jus cogens* is the existence of the natural law, but considers furthermore that *jus cogens* is *par se* natural law.<sup>69</sup>

85. He shares with full conviction and in full awareness of all its consequences, the idea that today the right of peoples to self-determination is one of the cases of *jus cogens*. He recognizes that his opinion does not entirely accord with that of the other Special Rapporteur, Mr. Cristescu, but considers that the two studies, the product of viewpoints which are not necessarily identical, do not have to tally in all their legal or theoretical assertions. The presence in the studies of differing viewpoints enriches them, enhances their interest and confirms the wisdom of entrusting the preparation of separate studies to two persons.

86. Article 53 of the Vienna Convention on the law of treaties provides that "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law". Article 64 provides that: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates." If, therefore, one accepts the view which the Special Rapporteur regards as correct—namely that the principle of self-determination has the character of *jus cogens*—any treaty which conflicts with the principle will be void. Article 53 of the Vienna Convention, which is already in force, was adopted in the face of some opposition (72 votes in favour, 3 against and 18 abstentions), and cannot therefore be regarded as codifying customary law. As between the States which are parties to the Vienna Convention, any international agreement entered into among them that violates the principle of the self-determination of peoples is undoubtedly void. As between the other States not as yet parties to the Convention, the fact that the idea that self-determination is a principle of *jus cogens* has been gaining ground in recent years and that the value and significance in real life and in legal thinking of the Vienna Convention are of very special and undoubted importance, is a circumstance that cannot be ignored as a basis for the view in favour of treating any international agreement, whatever its nature, that violates the principle of the self-determination of peoples as void.

87. Even though the Vienna Convention deals only with treaties between States, there is no doubt that from a theoretical point of view and in doctrine the same conclusion regarding the voidness of such treaties,

if they should violate a peremptory norm of international law, should apply to treaties between States and international organizations and to all international legal instruments of whatever nature, including, for example, resolutions of international organizations.

88. In his preliminary study, the Special Rapporteur said that there were certain questions closely and inextricably linked to the right of peoples under colonial and alien domination to self-determination which gave rise to serious and complex problems that would need analysis in the final study. Among such questions, he mentioned the problem of the territorial integrity of the State, the question of the rights and duties of States resulting from the exercise by peoples of their right to self-determination, and the question of very small States. He also said that he intended to examine those questions in the light of the replies received to the questionnaire.<sup>70</sup> Unfortunately, the replies so far received do not deal with these matters, which cannot therefore be studied in full. However, some replies have been received, which are analysed in the relevant parts of this study. For instance, the Government of Morocco has transmitted various documents giving its position on a number of problems, in particular on the question of the territorial integrity of the State in relation to the exercise of the right to self-determination. Consequently, as it is impossible to analyse all these questions in depth, only a few brief comments are possible, based on the views put forward by the Special Rapporteur in his study. Similarly, some inevitably very brief references will be made to the question of the international responsibility of the State in respect of breaches of obligations arising out of the right of peoples to self-determination and to the question of personal responsibility, in respect of offences arising out of an activity conducted in violation of the right of self-determination, under international penal law.

89. With regard to the preservation of the territorial integrity of the State in relation to implementation of the right of peoples to self-determination, both the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States<sup>71</sup> assert in strong terms the need to respect and preserve that integrity. Where the territorial integrity of the State is involved, the right to self-determination does not in principle apply.<sup>72</sup> This is an assertion of the greatest importance, which determines the attitude of the United Nations on the subject. But even the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States provides that sovereign and independent States, in order to be entitled to respect for their territorial integrity, should conduct themselves in compliance "with the principle of equal rights and self-determination" and should thus be "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

90. The express acceptance in those instruments of the principles of the national unity and the territorial integrity of the State implies non-recognition of the right of secession.<sup>73</sup> The right of peoples to self-determination, as it emerges from the United Nations

system, exists for peoples under colonial and alien domination, that is to say, who are not living under the legal form of a State. The right to secession from an existing State Member of the United Nations does not exist as such in the instruments or in the practice followed by the Organization, since to seek to invoke it in order to disrupt the national unity and the territorial integrity of a State would be a misapplication of the principle of self-determination contrary to the purposes of the United Nations Charter.<sup>74</sup> However, to avoid any misunderstanding, it is necessary, in the Special Rapporteur's view, to specify that if the national unity claimed and the territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination,<sup>75</sup> the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination.

91. The question of the duties of States resulting from the exercise by peoples of their right to self-determination has been dealt with in, among other instruments applicable, the two International Covenants on Human Rights (art. 1, para. 3) and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. All States "shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations" and "every State has the duty to refrain from any forcible action which deprives peoples... of their right to self-determination and freedom and independence...; in their actions against, and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter". The same ideas are expressed in the Definition of Aggression.<sup>76</sup> In other words, all States have a positive legal duty to respect, promote and assist the exercise of the right of peoples to self-determination and a negative duty to refrain from any measures which deprive peoples of that right. Any action the purpose of which is to deprive peoples of their right to self-determination constitutes an intervention specifically characterized as such by General Assembly resolutions 2131 (XX) and 2160 (XXI).<sup>77</sup> These duties must of course be interpreted, and their limits determined, in the light of the purposes and principles of the United Nations Charter and on the basis of systematic co-ordination of all the relevant instruments of the Organization.

92. In the exercise of their right to self-determination, peoples under colonial and alien domination have the right "to struggle... and to seek and receive support, in accordance with the principles of the Charter" and in conformity with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. It is in these terms that article 7 of the Definition of Aggression (General Assembly resolution 3314 (XXIX) of 14 December 1974) recognizes the legitimacy of the struggle of peoples under colonial or alien domination.

93. Thus the right of peoples to self-determination necessarily implies the right of peoples to struggle by every means available to them, when the possibilities

of obtaining recognition of the right to self-determination by peaceful means have been exhausted, against colonialist Powers which suppress their aspirations to freedom and independence. This right of colonial peoples, which is inherent in their status as such, has been recognized repeatedly in many resolutions of the United Nations General Assembly and implies acceptance of the legitimacy even of armed struggle against colonial domination and of the use of force to that end, since in such cases the use of force does not constitute a form of aggression.<sup>78</sup> At the thirty-fourth session of the Commission on Human Rights, numerous references and comments were made that concurred with the Special Rapporteur's view on the subject, and paragraph 2 of resolution 3 (XXXIV) reaffirmed the legitimacy of this struggle.

94. In the Charter of the United Nations provision is made for the use of force only in the case where it is employed by the international community in conformity with the provisions of the Charter, and consequently that is the only case where it is lawful (Arts. 42 to 50), or where force is resorted to in the exercise of the inherent right of individual or collective self defence (Art. 51). The relevant provision of the Charter concerns the case of armed attack against a Member of the United Nations. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)) cites 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", though it contains a saving clause regarding cases where under the provisions of the Charter the use of force is lawful.

95. The recognition by the United Nations of the legitimacy of the struggle of peoples under colonial and alien domination to escape from that domination does not imply a violation of the Charter or of the Declaration approved by resolution 2625 (XXV). On the contrary, it constitutes the correct application and necessary consequence of the principles affirmed in those instruments, for a State which forcibly subjugates a people to colonial or alien domination is committing an unlawful act expressly so defined by international law, and the subject people, in the exercise of its inherent right of self-defence, may fight to defend and attain its right to self-determination. The Special Rapporteur firmly upholds this view.

96. The struggle of peoples for their self-determination in face of colonial and alien domination gives rise to an international armed conflict and does not create a situation of civil war.<sup>79</sup> This view, which was upheld by the General Assembly in its resolution 3103 (XXVIII), of 12 December 1973, was affirmed in article 1, paragraph 4, of Protocol I to the Geneva Conventions of 1949, which was approved by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts in July 1977.<sup>80</sup>

97. Since the warlike conflicts resulting from the struggle of peoples against colonial and alien domination are not civil wars but international armed

conflicts, third States are not bound by the duty of non-intervention in the conflict, since on the contrary there is a positive legal obligation to assist a people struggling against colonial domination.

98. In the prosecution of this struggle, the individuals fighting for the self-determination of their people under colonial and alien occupation must be protected by the rules of humanitarian law, as has been repeatedly recognized by the General Assembly and as emerges from the recent work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts,<sup>81</sup> in particular from article 45, paragraph 3 of Protocol I of 1977 to the Geneva Conventions of 1949 and from resolution 3 (XXXIV) of the Commission on Human Rights, of 14 February 1978.

99. The General Assembly has also taken up the question of mercenaries engaged to fight against peoples under colonial and alien domination struggling for their self-determination. In view of the situation prevailing in various regions of conflict,<sup>82</sup> this subject is at present of very great importance and interest. In paragraph 6 of its resolution 31/34, of 30 November 1976, the General Assembly

*Reiterates* that the practice of using mercenaries against movements for national liberation and independence constitutes a criminal act and that the mercenaries themselves are criminals, and calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory and the transit of mercenaries through their territory to be punishable offences and prohibiting their nationals from serving as mercenaries.

This proposition is restated in General Assembly, resolution 32/14, of 7 November 1977. In resolution 239 (1967) the Security Council had already condemned "any State which persists in permitting or tolerating the recruitment of mercenaries, and the provision of facilities to them, with the objective of overthrowing the Governments of States Members of the United Nations". In resolution 405 (1977) the Council repeated that resolution and the condemnation pronounced in it. The Commission on Human Rights reaffirmed, in paragraph 4 of its resolution 3 (XXXIV), that the recruitment of mercenaries in such situations was unlawful.

100. For its part the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, at its session in 1977, adopted by consensus on 28 April an article stipulating that a mercenary shall not have the right to be a combatant or a prisoner of war. This article, which has become article 47 of Protocol I to the Geneva Conventions of 1949, defines the concept of mercenary and establishes that a mercenary shall not have the right to be a combatant or a prisoner of war.<sup>83</sup>

101. The right of peoples to fight for self-determination is a collective right, which is based on "man's basic human right to fight for the self-determination of his people under colonial and foreign domination".<sup>84</sup> Recognition of man's basic human right to fight for the self-determination of his people obviously has important implications for the legal status of such fighters and the way in which they should be treated.

102. The right of peoples to seek and receive help and political, moral and material assistance in their struggle to exercise self-determination has as its consequence the acceptance of the legitimacy of the support and assistance furnished to them. The provision of this help, as is the case with the legitimacy of the struggle conducted by these peoples, must of course accord with the principles of the Charter and be in conformity with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and the other applicable instruments of contemporary international law. The matter is thus subject to conditions and limitations.

103. Such help in the struggle of peoples for self-determination may be provided by States acting individually or collectively, since, as the General Assembly has stated, "it is the duty of every State to contribute through joint and independent action to the implementation of the principle of self-determination".<sup>85</sup> But help, support and assistance must also be provided by the whole United Nations system of organizations. As the Economic and Social Council stated in paragraph 2 of its resolution 1978 (LIX) of 31 July 1975, "the recognition by the General Assembly, the Security Council and other United Nations organs of the legitimacy of the struggle of colonial peoples to achieve freedom and independence entails, as a corollary, the extension by the United Nations system of organizations of all the necessary moral and material assistance to the peoples of the colonial territories and their national liberation movements".

104. Attention must again be drawn to the importance of the activities of national liberation movements in securing the effective exercise of the rights of peoples under colonial and alien domination to self-determination. Without anticipating the further treatment of this matter later in the study, it should be noted at this stage that, on the basis of resolution 2918 (XXVII) of 14 November 1972, the decision of 3 October 1973 and resolutions 3210 (XXIX) of 14 October 1974, 3237 (XXIX) of 22 November 1974 and 3375 (XXX) of 10 November 1975 of the General Assembly, the national liberation movements of the colonial territories in Africa recognized by OAU and the Palestine Liberation Organization were invited to participate as observers in the work of the General Assembly and other United Nations bodies. Also, in March 1976, the Security Council invited the Palestine Liberation Organization to participate, together with Israel, in the debate on the disturbances on the west bank of the River Jordan. Thus these movements were recognized to be the authentic representatives of the legitimate aspirations of peoples under colonial and alien domination, and were given a specific status. This not only facilitates ways and means of co-operating in the activities of the movements concerned and of involving them in United Nations efforts to secure the exercise of the right to self-determination, but also shows an awareness of all the possible results of their activities in stimulating progress towards full self-determination. The importance of these developments and their considerable impact on the current process of decolonization cannot fail to be recognized.

105. These United Nations resolutions mean that the above-mentioned national liberation movements

which are fighting against colonial and alien domination, as a manifestation of the right of peoples to self-determination, are accorded an international personality. What is more, these liberation movements, in the specific cases where they are operating against colonial and alien domination, have rights and obligations which contemporary international law has been conferring upon them on an increasing scale. In this sense, and to a limited extent, and with sole and strict reference to the exercise of the rights and obligations attributed to them by international law, they can be regarded as subjects of international law.<sup>86</sup>

106. The violation by a State of the right of peoples to self-determination constitutes a ground for international responsibility. The breach by a State of an obligation deriving from the recognition by international law of the right of peoples to self-determination, especially a violation of the duty to refrain from establishing or maintaining colonial domination by force, is an international crime, precisely characterized as such, which gives rise to an international responsibility governed by a specific régime.<sup>87</sup>

107. Certain particularly serious criminal acts of individuals committed in the course of an activity conducted in violation of the right of peoples to self-determination, for the purpose of establishing or maintaining colonial and alien domination by force, should be a matter for international penal law and, when a code of these international offences comes to be drawn up, should be specially provided for. The matter of the jurisdiction competent to deal with them will also have to be settled.<sup>88</sup>

108. The question of very small States<sup>89</sup> has manifold implications. It is clear that it raises very serious

and complex problems as regards the exercise of the right of peoples to self-determination. It is not the Special Rapporteur's intention to analyse this issue in depth, since it has been dealt with extensively in international theory and practice. There is no legal basis for denying the right to self-determination on the ground that the population of which a people is composed, or the territory which it inhabits, is small; consequently, the existence of the right to self-determination cannot be challenged by arguing that, if its exercise led to independence, a very small State might result. However, the matter requires serious thought because of the difficulties to which this could give rise; because in certain extreme cases very small States would not be in a position to form real free, independent and sovereign entities<sup>90</sup> and would be unable to discharge the duties that inevitably flow from membership of the United Nations;<sup>91</sup> and because the proliferation of very small States might have the effect of destroying or seriously undermining the very foundations of the existing community of nations, while at the same time giving rise to the problem that this type of very small State might be particularly suited to forms of intervention and/or influence which could well characterize dangerous manifestations of neo-colonialism. For the same reasons, it is necessary, without any course being taken which would affect the essence of the right of peoples to self-determination, to stress the desirability of the formation of unions, confederations or federations of States—provided that these result from the free expression of the sovereign will of the peoples composing them—which make it possible to overcome the major difficulties and more obvious dangers to which an uncontrolled and undefined proliferation of very small States would give rise.

#### FOOT-NOTES TO CHAPTER I

<sup>1</sup> See the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-sixth session (E/CN.4/1128), paras. 27-28. See also the report of the Commission on Human Rights on its twenty-ninth session (*Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 6 (E/5265)*).

<sup>2</sup> In its reply of 13 October 1975, the Government of New Zealand makes the following observation concerning the concept of the right to self-determination and its content:

"The concept of 'the right to self-determination' has been interpreted by the New Zealand Government as a responsibility to grant to the peoples of dependent territories that measure of independence which they consider best suited to their needs.

"Implicit in the 'right to self-determination', in this country's view, is the right of a people to be free from economic exploitation or political domination by another country and to have full and permanent sovereignty over natural resources. Recognizing that self-determination includes political, economic, and social factors, a country should have the freedom to establish its own constitution and political status, to control its resources, to establish its own trade relations, and to protect its own cultural and social values by controlling its own educational system."

<sup>3</sup> See statement in this sense by the Observer for the Federal Republic of Germany in the Commission on Human Rights on 9 February 1978, E/CN.4/SR.1433, paras. 20 and 21.

<sup>4</sup> Article 1, para. 2, and Article 55.

<sup>5</sup> Article 1 of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant

on Civil and Political Rights (for the text, see *Human Rights: A compilation of international instruments of the United Nations* (United Nations publication, Sales No. E.73.XIV.2)).

<sup>6</sup> Resolutions 1514 (XV) of 14 December 1960, 1541 (XV) of 15 December 1960, 2105 (XX) of 10 December 1965, 2621 (XXV) of 12 October 1970, 2627 (XXV) of 24 October 1970 and 3103 (XXVIII) of 12 December 1973.

<sup>7</sup> Resolution 2131 (XX) of 21 December 1965.

<sup>8</sup> Resolution 2734 (XXV) of 16 December 1970, para. 18.

<sup>9</sup> Resolution 2625 (XXV) of 24 October 1970.

<sup>10</sup> Resolution 3314 (XXIX) of 14 December 1974.

<sup>11</sup> General Assembly resolutions 523 (VI) of 12 January 1952, 626 (VII) of 21 December 1952, 1314 (XIII) of 12 December 1958, 1514 (XV) of 14 December 1960, 1803 (XVII) of 14 December 1962, 2158 (XXI) of 25 November 1966, 2386 (XXIII) of 19 November 1968, 2625 (XXV) of 24 October 1970, 2692 (XXV) of 11 December 1970, 3016 (XXVII) of 18 December 1972, 3171 (XXVIII) of 17 December 1973, 3336 (XXIX) of 17 December 1974 and 3516 (XXX) of 15 December 1975; Economic and Social Council resolution 1956 (LIX) of 25 July 1975.

<sup>12</sup> Resolutions 2626 (XXV) of 24 October 1970, 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 and 3362 (S-VII) of 16 September 1975.

<sup>13</sup> Resolution 3281 (XXIX) of 12 December 1974.

<sup>14</sup> Resolution 2542 (XXIV) of 11 December 1969.

<sup>15</sup> "The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs" (E/CN.4/Sub.2/L.625), paras. 52-164.

<sup>16</sup> See paragraphs 128-134 of the preliminary report and the view expressed by the General Assembly in the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (resolution 2627 (XXV), para. 6).

<sup>17</sup> See, for example, the pages which James Brice devoted in 1921 to the study of the principle of self-determination *International Relations*, Kennikat Press, Inc., Port Washington, N.Y., 1922.

<sup>18</sup> Resolution 2200 A (XXI) of 16 December 1966. The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976. Up till the time when this study was published, the following countries had ratified or acceded to the Covenant: Australia; Austria; Barbados; Bulgaria; Byelorussian Soviet Socialist Republic; Canada; Chile; Colombia; Costa Rica; Cyprus; Czechoslovakia; Denmark; Dominican Republic; Ecuador; Finland; Gambia; German Democratic Republic; Germany (Federal Republic of); Guinea; Guyana; Hungary; Iran; Iraq; Italy; Jamaica; Jordan; Kenya; Lebanon; Libyan Arab Jamahiriya; Madagascar; Mali; Mauritius; Mongolia; Netherlands; New Zealand; Norway; Panama; Peru; Philippines; Poland; Portugal; Romania; Rwanda; Senegal; Spain; Surinam; Sweden; Syrian Arab Republic; Trinidad and Tobago; Tunisia; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; Uruguay; Venezuela; Yugoslavia and Zaire. The International Covenant on Civil and Political Rights entered into force on 23 March 1976. At that time, the latter Covenant had been ratified or acceded to by the same countries, with the exception of Australia, Gambia and the Philippines.

<sup>19</sup> See the report of the Commission on Human Rights on its eighth session (*Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4 (E/2256)*), paras. 20-91.

<sup>20</sup> *Official Records of the General Assembly, Tenth Session, Annexes*, agenda item 28-I, document A/3077, paras. 27-77.

<sup>21</sup> This historical background is analysed in the report by Mr. Cristescu mentioned above (E/CN.4/Sub.2/L.625, paras. 103-118). See also *United Nations Action in the Field of Human Rights* (United Nations publication, Sales No. E.74.XIV.2), pp. 33-34.

<sup>22</sup> C. de Visscher, *Théories et réalités en droit international public*, 3rd ed., (Paris, Pedone, 1960), pp. 166-167; B. Mirkin-Guetzevich, "Quelques problèmes de la mise en œuvre de la Déclaration universelle des droits de l'homme", *Académie de droit international, Recueil des cours* 1953, II, Leyden, A.W. Sijthoff, 1955, vol. 83, p. 255; A. Cobban, *National Self-Determination* (London, Oxford University Press, 1945), p. 47; S. Eagleton, "Self-determination in the United Nations", *The American Journal of International Law*, vol. 47, No. 1, January 1953, Washington, D.C., pp. 91-93; M. Sibert, *Traité de droit international public* (Paris, Dalloz, 1951), vol. I, pp. 304-305.

<sup>23</sup> G.I. Tunkin, *Droit international public, Problèmes théoriques* (Paris, Pedone, 1965).

<sup>24</sup> Adopted on 11 May 1968. "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights."

<sup>25</sup> E/CN.4/SR.1299, E/CN.4/1300 and E/CN.4/SR.1342, pp. 3-4.

<sup>26</sup> The International Court of Justice recognized it as such in its advisory opinion on *Western Sahara*, in which it referred to "the principle of self-determination as a right of peoples" (*I.C.J. Reports 1975*, p. 31).

<sup>27</sup> See J.E.S. Fawcett, "Human rights in international relations", *The study of International Affairs, Essays in honour of Kenneth Younger* (London, Oxford University Press, 1972), p. 24.

<sup>28</sup> J. Echeverría, "Le peuple comme communauté du manque — Elements pour une définition", *Pour un droit des peuples*, collection "Tiers monde en bref", Paris, Berger-Levrault, 1978.

<sup>29</sup> H. Gros Espiell, *El derecho al desarrollo como un derecho de la persona humana* (Caracas, Universidad Simón Bolívar, 1978); J. Rivero, *Sur le droit au développement*, UNESCO, SS-78/Conf.-630, Supplement 2, 1978; H. Gros Espiell, "Los derechos humanos y el derecho a la libre determinación de los pueblos", *Estudios en honor de Manuel García Pelayo*,

Caracas, Universidad Central de Venezuela, 1978; UNESCO, international Commission for the study of communication problems, *Interim report on communication problems in modern society*, prepared for the twentieth session of the General Conference of UNESCO, para. 176.

<sup>30</sup> See the statement to the same effect made by the representative of France in the Commission on Human Rights on 10 February 1978 (E/CN.4/SR.1436, paras. 3-8). *International protection of human rights: proceedings of the seventh Nobel Symposium* (Oslo, 1967), summary of discussion, sect. VI ("Self-determination and human rights"), Stockholm, Almqvist and Wiksell, 1968, p. 282. Against: K.J. Partsch, *Les principes de base des droits de l'homme: l'autodétermination, l'égalité et la non-discrimination*, UNESCO, *Les dimensions internationales des droits de l'homme - Manuel destiné à l'enseignement des droits de l'homme dans les universités*, Paris, 1978, para. 45.

<sup>31</sup> J.E.S. Fawcett, "The role of the United Nations in the protection of human rights, is it misconceived?", *International Protection of Human Rights... (op. cit.)*, p. 97. A criticism of this view is made by Partsch, *loc. cit.*, para. 45.

<sup>32</sup> International Covenants on Human Rights, art. 1, para. 3. Opinion of the Spanish Government in the written statement submitted to the International Court of Justice (I.C.J.), *Western Sahara: Written statement of the Spanish Government*, Madrid, Ministry of Foreign Affairs, March 1975, p. 318.

<sup>33</sup> In its reply to the Special Rapporteur's request for information, the Government of New Zealand stated:

"The evolution of a dependent country towards self-determination normally involves a gradual transfer of responsibilities from the administering power to the people, a process which should be accompanied by appropriate training of personnel in administration, politics and management of the economy. It is the responsibility of an administering power to provide such assistance under its commitment to United Nations resolution 1514 (XV). Equally it is a responsibility of the United Nations, its specialized agencies and the international community to respond to requests for help.

"...

"It has been New Zealand's aim, in implementing the independence of its dependent territories, to reconcile two sometimes conflicting demands:

"(a) the need to satisfy the requirements of the Declaration on Colonialism;

"(b) the need to make adequate provisions for those island peoples who wish to retain economic and citizenship ties with New Zealand.

"This country has found that the terms of the United Nations resolutions on self-determination have not always been fully in harmony with the wishes of the dependent people. A measure of flexibility is required to take account, in particular, of the special needs of small territories.

"There is, for example, some ambiguity in resolution 1514 (XV) which states on the one hand, that: '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', and, on the other, that: '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'" (para. 5). On the impossibility of requiring a particular degree of political, economic, social and cultural maturity for the granting of independence, see Tunkin, *op. cit.*, p. 49.

<sup>34</sup> Opinion of the Spanish Government in the written statement submitted to the International Court of Justice (see foot-note 32 above); C. Berezowsky, "Le problème de la subjectivité internationale", *Mélanges offerts à Juraj Andrássy*. (The Hague, M. Nijhoff, 1968), p. 45.

<sup>35</sup> With regard to the question of reparation for injuries suffered in the service of the United Nations, the International Court of Justice stated: "The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community." (*I.C.J. Reports 1949*, p. 178). In the case of the Western Sahara, the Court applied this concept to

establish the legal nature of the "Belad Chinquti" or Mauritanian entity (see the advisory opinion on the Western Sahara (I.C.J. Reports 1975), p. 63).

<sup>36</sup> I.C.J. Reports 1975, pp. 31 and 33. The point was developed at length in the declaration of Judge Nagendra Singh, who shares the Court's opinion on the subject (*ibid.*, pp. 72-73).

<sup>37</sup> *Ibid.*, p. 33. In his separate opinion, Judge Ammoun included among such dispensations the case in which the will for self-determination emerges from the armed struggle of a people (*ibid.*, pp. 99-100).

<sup>38</sup> For instance, in para. 1 of General Assembly resolution 2621 (XXV) of 12 October 1970.

<sup>39</sup> "The principles of the Charter which are embodied in this Declaration constitute basic principles of international law" (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General part, para. 3, resolution 2625 (XXV). See the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/AC.125/12), paras. 26-29 and 61-78; O. Šuković, "Principle of equal rights and self-determination of peoples", in *Principles of International Law concerning Friendly Relations and Co-operation*, M. Šahović, ed., Belgrade, Institute of International Politics and Economics, 1972, and I. M. Sinclair, "Principles of international law concerning friendly relations and co-operation among States", *Essays on International Law: In Honour of Krishna Rao*, M. K. Nawaz, ed., (Leyden, Sijthoff, 1976).

<sup>40</sup> For the principle of self-determination in the jurisprudence of the International Court of Justice, see the advisory opinion of 21 June 1971 on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)* (I.C.J. Reports 1971, p. 31). The Court's advisory opinion on *Western Sahara* (*ibid.*, 1975, pp. 31-33) analyses the principle in full. The principle had previously been referred to in passing in the decisions of the Court and in the separate opinions of certain judges; for example, in his separate opinion in the Barcelona Traction, Light and Power Company case, Judge Ammoun quoted with approval a statement made by the late Secretary-General of the United Nations, U Thant, at the 1969 session of OAU at Addis Ababa, to the effect that the principle of self-determination was an imperative rule of law (*ibid.*, 1970, p. 304).

<sup>41</sup> See S. Glaser, "Decolonisation et succession aux traités", *Revue générale de droit international public*, Paris, Pedone, 1970, October-December 1970, 74th year, vol. 14, No. 4, p. 906; the report of the International Law Commission on the work of its twenty-sixth session (*Yearbook of the International Law Commission*, 1974, vol. II (part one) (United Nations publication, Sales No. E.75.V.7 (Part I), document A/9610/Rev.1, paras. 57-60; the second report of Sir Humphrey Waldock, Special Rapporteur (*ibid.*, 1969, vol. II) (United Nations publication, Sales No. E.70.V.8), document A/CN.4/214 and Add.1 and 2, paras. 19-23, on the question of decolonization as an element in the topic of succession of States; article 1 of the draft articles submitted by Sir Humphrey Waldock (*ibid.*, p. 50) and the same text (article 3) of the draft articles on succession of States in matters other than treaties, submitted by Mr. Mohammed Bedjaoui (*ibid.*, 1974, vol. II (part one), p. 94, document A/CN.4/282). See also Héctor Gros Espiell, "La desnuclearización militar de la América Latina y la sucesión de Estados en materia de tratados" in *El tratado de Tlatelolco: Algunas consideraciones sobre aspectos específicos*, Mexico, D.F., Organismo para la Prescripción de las Armas Nucleares en la América Latina, 1976 (foot-note 21 to this chapter gives a bibliography on this question).

<sup>42</sup> The lapse or loss of validity of original titles by virtue of new applicable law is a question which has been resolved by so-called "intertemporal law". In the *Minquiers and Ecrenos Case*, the International Court of Justice stated: "The Court considers it sufficient to state as its view that even if the Kings of France did have an original feudal title also in respect of the Channel Islands, such a title must have lapsed as a consequence of the events of the year 1204 and following years" (I.C.J. Reports 1953, p. 56). The same doctrine had been expressed in the *Island of Palmas Case*. Judge Huber had said: "As regards the question which of different legal systems prevailing at successive periods is to be applied

in a particular case (the so-called "intertemporal law"), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law" (United Nations, *Reports of International Arbitral Awards*, vol. II, p. 845). In 1953, Judge Gros stated: "A legal fact must be viewed in the light of the law contemporaneous with it (...). When the legal system by virtue of which the title has been validly created disappears, the right can no longer be claimed under the new legal system unless it conforms to the conditions required by that system" (I.C.J. Pleadings, *The Minquiers and Ecrenos Case (United Kingdom/France)*, vol. II, p. 375). In 1975, Judge de Castro, commenting on the Court's decision on this question, stated "The Court thus judged that the original title ceases to be valid if there are new facts to be considered on the basis of new law" (I.C.J. Reports 1975, p. 168). See also the resolution of the Institute of International Law adopted in 1975 and the comments upon this resolution in *Annuaire français de droit international*, 1975 Paris, vol. XXI, pp. 1313-1317.

<sup>43</sup> See the report of the International Law Commission on the work of its fifteenth session (*Yearbook of the International Law Commission on 1963*, vol. II (United Nations publication, Sales No. 63.V.2), pp. 198-199, document A/5509, chap. II, sect. B, art. 37 and commentary, paras. (1) to (5).

<sup>44</sup> See the report of the International Law Commission the work of its eighteenth session (*ibid.*, 1966), vol. II (United Nations publication, Sales No. 67.V.2), pp. 247-249, document A/6309/Rev.1, part II, chap. II, sect. C, art. 50 and commentary, paras. (1) to (6).

<sup>45</sup> *Official Records of the General Assembly, Twenty-first Session, Sixth Committee*, 905th meeting.

<sup>46</sup> Note verbale of 27 August 1964. See M. P. González, "Los Gobiernos y el *ius cogens*: Las normas imperativas de derecho internacional en La Sexta Comisión", *Estudios de Derecho Internacional Público y Privado, Homenaje al Profesor Luis Sela Sempil*, Oviedo, 1970, p. 133.

<sup>47</sup> E. de la Guardia and M. Delpech, *El Derecho de los Tratados y la Convención de Viena* (Buenos Aires, La Ley, 1970), p. 426; J. Nisot, "Le *ius cogens* et la Convention de Vienne sur les Traités", *Revue générale de droit international public*, Paris, Pedone, 1972, No. 3.

<sup>48</sup> See the report of the International Law Commission on the work of its fifteenth session (*Yearbook of the International Law Commission*, 1963, vol. II (United Nations publication, Sales No. 63.V.2)), p. 198, document A/5509, chap. II, sect. B, art. 37, para. (3) of the commentary. See the study on this question by J. A. Pastor Ridruejo, *La determinación del contenido del *ius cogens** (Madrid, Instituto Hispano-Luso-Americano de derecho internacional, 1972), p. 10.

<sup>49</sup> H. Gros Espiell, *Derecho Internacional del Desarrollo* (University of Valladolid, 1975), p. 26.

<sup>50</sup> *Official Records of the General Assembly, Twenty-fifth Session, Sixth Committee, Summary records of the meetings*, 1180th meeting.

<sup>51</sup> *Ibid.*, 1183rd meeting.

<sup>52</sup> See Special Committee (1970) on Principles of International Law concerning Friendly Relations and Co-operation among States, summary records of the 110th to the 114th meetings (A/AC.125/SR.110-114), 114th meeting.

<sup>53</sup> See M. Šahović, "Codification des principes de droit international des relations amicales et de la coopération entre les Etats", *Académie de droit international, Recueil des cours*, 1972, III, Leyden, A. W. Sijthoff, 1972, vol. 137, pp. 302-303; C. D. Johnson, "Towards self-determination: A reappraisal as reflected in the declaration on friendly relations", *Georgia Journal of International and Comparative Law*, vol. III, 1973, pp. 146-163; G. Arangio Ruiz, "The normative role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations", *Académie de droit international, Recueil des cours*, 1972, III, Leyden, A. W. Sijthoff, 1972, vol. 137, p. 441; R. Rosenstock, "The Declaration of Principles of International Law concerning Friendly Relations: a Survey", *American Journal of International Law*, vol. 65, No. 5, October 1971, Washington, D.C., pp. 713-735; P.-H. Houben, "Principles of international law concerning friendly

relations and cooperation among States" (*ibid.*, vol. 61, No. 3, July 1967, pp. 703-736); Sinclair, *loc. cit.*, p. 138.

<sup>54</sup> General Assembly resolution 2627 (XXV).

<sup>55</sup> General Assembly resolution 2734 (XXV).

<sup>56</sup> Submission by Mr. Mohammed Bedjaoui to the International Court of Justice in the *Western Sahara Case* on 16 July 1965 (see ICJ, Year 1975, public meeting held on 16 July 1975 (...)) in connexion with the *Western Sahara Case* (Request for Advisory Opinion) (CR 75/20) (will appear in *I.C.J. Pleadings, 1975*). Separate opinion of Judge Ammoun in the Namibia case (*I.C.J. Reports 1971*, pp. 89-90); Opinion of the Spanish Government in the written statement submitted to the International Court of Justice in the *Western Sahara Case* (see foot-note 32, above).

<sup>57</sup> See the separate opinion of Judge Ammoun in the *Barcelona Traction, Light and Power Company Limited Case* (*ibid.*, pp. 304 and 312); G. Schwarzenberger, "The purposes of the United Nations: international judicial practice", *Israel Yearbook on Human Rights*, vol. 4, 1974, Faculty of Law, Tel-Aviv University, p. 17.

<sup>58</sup> See B. G. Ramcharan, *The International Law Commission: its approach to the codification and progressive development of international law* (The Hague, M. Nijhoff, 1977), pp. 143-148; P. Reuter, *Introduction au droit des traités* (Paris, Armand Collin, 1972), pp. 141-142; L. A. Alexidze, "Problem of *jus cogens* in contemporary international law", *Soviet Yearbook of International Law, 1969*, Moscow, Soviet Association of International Law, 1970, pp. 146-149; C. de Visscher, "Positivisme et *jus cogens*", *Revue générale de droit international public*, 75th year, vol. 75, January-March 1971, pp. 5 *et seq.*; G. Tunkin, "*Jus cogens* in contemporary international law", *University of Toledo Law Review*, 1971, p. 107; S. E. Nahlik, "*Jus cogens* and the codified law of treaties", *Temis-Symbolae Garcia Arias*, 33-36, Facultad de Derecho de la Universidad de Zaragoza, 1973-1974, pp. 85-111; A. C. Kiss, "Le droit international peut-il être considéré comme volontariste?" (*ibid.*, pp. 75-84).

<sup>59</sup> At its Eleventh Congress (Madrid, 1977), the Instituto-Hispano-Luso-Americano de Derecho Internacional stated: "The principle of the self-determination of peoples is an intrinsic element of human consciousness and an integral part of the rules of *jus cogens* of positive international law." (Translation by the United Nations Secretariat.) See also: Alexidze, *loc. cit.*, p. 148; the fifth report on State responsibility by Mr. Roberto Ago, Special Rapporteur: the internationally wrongful act of the State, source of international responsibility (*Yearbook of the International Law Commission, 1976*, vol. II, part one (United Nations publication, Sales No. E.77.V.5 (part I)), document A/CN.4/291 and Add.1 and 2, pp. 31-32, para. 99, pp. 49-53, para. 141 and p. 54, para. 155; I. Brownlie, *Principles of Public International Law* (Oxford, Clarendon Press, 1966), p. 415; Kiss, *loc. cit.*, p. 83; G. Abi-Saab, *The concept of jus cogens in international law* (Geneva, Carnegie Endowment for International Peace, 1967), p. 13; J. J. Caicedo Perdomo, "La teoría del *jus cogens* en derecho internacional a la luz de la Convención de Viena sobre el derecho de los tratados", *Revista de la Academia Colombiana de Jurisprudencia*, Nos. 206-207, January-June, 1975, p. 272; A. Gómez Robledo, *El derecho de autodeterminación de los pueblos y su campo de aplicación* (Madrid, 1976); A. Moreno López, *Igualdad de derechos y libre determinación de los pueblos: principio eje del derecho internacional contemporáneo* (Facultad de Derecho de la Universidad de Granada, 1977); R. Galindo Pohl, *Jus Cogens*, OEA, Comité Jurídico Interamericano, Cuarto Curso de Derecho Internacional, Washington, D.C., 1977.

<sup>60</sup> R. Ago, "Droit de traités à la lumière de la Convention de Vienne: introduction", *Académie de droit international, Recueil des cours, 1971*, III, Leyden, A. W. Sijthoff, 1972, vol. 134, refers to the rights of the individual and *jus cogens* on p. 324, foot-note 37, and gives an extensive bibliography on p. 321, foot-note 35. See also Nahlik, *loc. cit.*, p. 101; T. O. Elias, *The Modern Law of Treaties* (Leyden, A. W. Sijthoff, 1974), p. 185.

<sup>61</sup> In 1973, Sir Gerald Gray Fitzmaurice did not include self-determination in his list (The future of public international law and of the international legal system in the circumstances of today, Institute of International Law, Special Report, 323-324). In 1977, M. M. Whiteman "*Jus cogens* in international law, with a projected list", *Georgia Journal of International*

*and Comparative Law*, 1977, vol. 7, issue 2, pp. 609-626, was guilty of the same deplorable omission.

<sup>62</sup> See the report of the International Law Commission on the work of its twenty-eighth session (*Yearbook of the International Law Commission, 1976*, vol. II, part two (United Nations publication, Sales No. E.77.V.5 (Part II)), p. 75, document A/31/10, art. 19, para. 3 (b)). Mr. Ago's draft was discussed at the 1371st-1376th and 1402nd and 1403rd meetings (*ibid.*, vol. I, United Nations publication, Sales No. E.77.V.4). Mr. Ramangasoavina made a special reference to the principle of self-determination (*ibid.*, p. 75, E/CN.4/SR.1374, para. 20).

<sup>63</sup> *Ibid.*, vol. II, part one (United Nations publication, Sales No. E.77.V.5 (Part I)), p. 54 (document A/CN.4/291 and Add.1 and 2), art. 18, para. 3 (a).

<sup>64</sup> See the reports of the Sub-Commission on its thirtieth and thirty-first sessions: E/CN.4/1261, para. 163; E/CN.4/1296, para. 167.

<sup>65</sup> See E/CN.4/SR.1410, pp. 14-15 and E/CN.4/SR.1411, pp. 11-12.

<sup>66</sup> See the report of the Commission on Human Rights on its thirty-third session (*Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6* (E/5927)), para. 136.

<sup>67</sup> See the report of the Commission on Human Rights on its thirty-fourth session (*ibid.*, 1978, Supplement No. 4 (E/1978/34)), paras. 121-122.

<sup>68</sup> See *Report of the World Conference to Combat Racism and Racial Discrimination* (United Nations publication, Sales No. E.79.XIV.2).

<sup>69</sup> In traditional Spanish law and in the law of the Indies, when the law was contrary to natural law the latter was applied and not the law. (See J. de J. López Monroy, "El código civil y las leyes de Indias", in *El libro centenario del código civil*, UNAM, México, 1978, p. 146.)

<sup>70</sup> E/CN.4/Sub.2/L.626, paras. 153-154.

<sup>71</sup> General Assembly resolutions 1514 (XV), para. 6, and 2625 (XXV).

<sup>72</sup> Declaration of Judge Nagendra Singh in the *Western Sahara Case* (*I.C.J. Reports 1975*, p. 80). In this advisory opinion, the International Court of Justice made express reference to respect for territorial integrity, citing paragraph 6 of General Assembly resolution 1514 (XV) (p. 31) and also recorded this view in settings out the grounds for its opinion (p. 68). See J. A. Carrillo Salcedo, "Libre determinación de los pueblos e integridad territorial de los Estados en el dictamen del Tribunal Internacional de Justicia sobre el Sahara occidental", *Revista Española de Derecho Internacional*, vol. XXIX, No. 1, Madrid, 1976.

<sup>73</sup> G. Scelle, "Quelques réflexions sur le droit des peuples à disposer d'eux-mêmes", *Problèmes fondamentaux du droit international, Festschrift für Jean Spiropoulos*, Bonn, Schimmbelbusch and Co., 1957; A. Gómez Robledo, *El derecho de autodeterminación de los pueblos y su campo de aplicación* (Madrid, 1976), p. 11.

<sup>74</sup> See the report of the Rapporteur of Committee 1 to Commission I of the San Francisco Conference concerning the inclusion of the principle of self-determination in the Charter (*Documents of the United Nations Conference on International Organization, I/1/34* (vol. VI, p. 396)).

<sup>75</sup> The penultimate preambular paragraph of General Assembly resolution 2787 (XXVI) of 6 December 1971 reads: "Further considering that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State established in accordance with the right of self-determination of its people is incompatible with the purposes and principles of the Charter".

<sup>76</sup> General Assembly resolution 3315 (XXIX) of 14 December 1974, annex, art. 7.

<sup>77</sup> In its reply of 25 August 1975, the Government of Mexico states: "There is a legal obligation to assist all peoples under colonial and alien domination to attain self-determination and independence." Any action to deny to peoples their right to self-determination constitutes intervention, for under resolutions 2131 (XX) and 2160 (XXI) the principle of non-intervention protects not only sovereign States but also peoples under colonial or alien domination. (S. Bastid, "Remarques sur l'interdiction de l'intervention", *Mélanges offerts à Juraj Andrassy, op. cit.*, p. 3).

<sup>78</sup> J. Tomasi, "La conception soviétique des guerres de libération nationale" in *Current Problems of International Law*, texts compiled by A. Cassese, Milan, A. Giuffrè, 1975; Y. Zourek, "Enfin une définition de l'agression", *Annuaire français de droit international*, 1974, Paris, vol. XX, p. 24; P. Pierson Mathy, *La légalité des guerres de libération nationale*, (Helsinki, 1970); G. Ginsburgs, "'Wars of liberation' and the modern law of nations — The Soviet thesis" in H. W. Baade, ed., *The Soviet Impact on International Law*, New York, Oceana Publications, 1965; A. Di Blase, "La Légitimité du recours à la force dans les résolutions des Nations Unies et dans la Déclaration d'Alger, *Pour un droit des peuples*, collection "Tiers monde en bref", Paris, Berger-Levrault, 1978; I. P. Blischenko, "The use of force in international relations and the role of prohibition of certain weapons"; N. Ronziti, "Resort to force in wars of national liberation", *Current Problems of International Law* (op. cit.). The right of peoples to fight for their self-determination is recognized in a large number of instruments, for instance, General Assembly resolutions 2625 (XXV) of 24 October 1970, 2787 (XXVI) of 6 December 1971, 3103 (XXVIII) of 12 December 1973, 3314 (XXIX) of 14 December 1974, 3382 (XXX) of 8 December 1975 and 31/34 of 30 November 1976. See also Security Council resolutions 269 (1969), 277 (1970) and 282 (1970), to the same effect. In this connexion, see J. L. Iglesias Buigues, "La prohibición general del recurso a la fuerza y las resoluciones descolonizadoras de la Asamblea General de las Naciones Unidas", *Revista Española de Derecho Internacional*, vol. XXIV, Nos. 1-2, Madrid, 1971, p. 173. The Government of Pakistan, in its reply to the questionnaire, made particular reference to this point, mentioning General Assembly resolution 2649 (XXV). In his separate opinion on the *Western Sahara Case*, Judge Ammoun, commenting on paragraph 59 of the Court's opinion, stated:

"The latter paragraph ends by referring to certain instances where consultation in application of the principle of self-determination was dispensed with by the General Assembly. Such instances are very numerous.

"The paragraph is certainly in fairly general terms, since it mentions *in fine* 'the conviction that a consultation was totally unnecessary in view of special circumstances'.

"Nevertheless, it seems to me that there is one case which deserves to be mentioned specifically: that is the legitimate struggle for liberation from foreign domination.

"The General Assembly has affirmed the legitimacy of that struggle in at least four resolutions, namely resolutions 2372 (XXII), 2403 (XXIII), 2498 and 2517 (XXIV), which taken together already constitute a custom. Furthermore the Security Council to has affirmed it in resolution 269 (1969).

"This recognition by the United Nations of the legitimacy of that struggle comes within the framework of the developments in law affirmed by the Court in its Advisory Opinion on *Namibia* (*I.C.J. Reports 1971*, p. 31). The Court there explained that: 'in this domain as elsewhere the *corpus juris gentium* has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore' (*ibid.*).

"I upheld this point of view on the occasion of the Advisory Opinion on *Namibia* in 1971. I was not followed. I return to the charge, and I would have liked the last sentence of paragraph 59 to be completed as follows: 'and in particular the legitimate struggle for liberation from foreign domination'.

"Nothing could show more clearly the will for emancipation than the struggle undertaken in common, with the risks and immense sacrifices it entails. That struggle is more decisive than a referendum, being absolutely sincere and authentic. Many are the peoples who have had recourse to it to make their right prevail. It is, one need hardly repeat, that thousand-year struggle which has established the right of peoples to decide their own fate, a right which jurists, statesmen, constitutions and declarations, and the United Nations Charter, have merely recognized and solemnly proclaimed." (*I.C.J. Reports 1975*).

The Declaration on the Strengthening of International Security (resolution 2734 (XXV)) characterizes the struggle of oppressed peoples as a "legitimate struggle" (para. 18) and resolution 32/154 (Implementation of the Declaration on the Strengthening of International Security) of 19 December 1977:

"Reaffirms the legitimacy of the struggle of peoples under colonial and alien domination to achieve self-determination and independence and urges States to increase their support and solidarity with them and their national liberation movements and to undertake urgent and effective measures for the speedy completion of the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (...)" (para. 3).

The General Assembly, in its resolution 32/147 (Measures to prevent international terrorism (...)) of 16 December 1977, in reaffirming "the inalienable right to self-determination and independence of all peoples under colonial and racist régimes and other forms of alien domination, likewise reaffirmed "the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the relevant resolutions of the organs of the United Nations" (para. 3).

<sup>79</sup> Resolution 3103 (XXVIII) of 12 December 1973, para. 3; resolution III of the Institute of International Law of 14 August 1975 (for the text, see Institut de droit international, *Annuaire*, vol. 56, *Session de Wiesbaden 1975*, Basilea, S. Karger S.A., p. 544). See F. A. F. von der Heydte, "La intervención en la guerra civil — Anotaciones críticas a la resolución del Institut de droit international", *Temis-Symbolae Garcia Arias*, 33-36, Facultad de Derecho de la Universidad de Zaragoza, 1973-1974, pp. 443-436; *Annuaire français de droit international*, 1975, Paris, vol. XXI, pp. 1319-1320.

<sup>80</sup> With regard to the matters discussed in paragraphs 91 to 94, see article 1, paragraph 4 of Protocol 1 to the Geneva Conventions of 1949. Owing to its importance, the text of that paragraph 4 is reproduced here. It reads: "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." See also M. Veuthey, *Guérilla et droit humanitaire*, Geneva, Collection scientifique de l'Institut Henri Dunant, 1976). See the points of view of C. Chaumont, "La recherche d'un critère pour l'intégration de la guérilla au droit international humanitaire contemporain", *Mélanges offerts à Charles Rousseau*, la communauté internationale, Paris, Pédone, 1974, and Marks, *loc. cit.*

<sup>81</sup> The relevant resolutions of the General Assembly, the International Conference on Human Rights at Teheran and the International Conferences of the Red Cross (1965 and 1969), and the work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, are cited in paragraphs 271 to 274 of this study. See Thai Quang Trung, "Le droit international humanitaire en question", *Le Monde*, 20 May 1976, p. 8; and J. J. A. Salmon, "La Conférence diplomatique sur la réaffirmation et le développement du droit international humanitaire et les guerres de libération nationale", *Revue belge de droit international*, vol. XII, 1976-1, Brussels, pp. 27-52.

<sup>82</sup> See E. David, *Mercenaires et volontaires internationaux en droit des gens* (Brussels, University of Brussels, 1977).

<sup>83</sup> See *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, 1974-1977), vol. I, (Bern, Federal Political Department, 1978), p. 145. See also A. Viñal Casas, "El estatuto jurídico internacional de los mercenarios", *Revista Española de Derecho Internacional*, vol. XXX, Nos. 2-3, Madrid, 1977, pp. 289-313.

<sup>84</sup> General Assembly resolution 2787 (XXVI) of 6 December 1971, para. 2. This text originated in a proposal of the Commission on Human Rights to the Economic and Social Council for recommendation to the General Assembly for adoption (see Commission on Human Rights, Report on its twenty-seventh session, *Official Records of the Economic and Social Council, Fiftieth Session, Supplement No. 4*, pp. 29, 32, 79, 105-106).

<sup>85</sup> Resolution 2787 (XXVI), para. 7.

<sup>86</sup> See "Study of the individual's duties to the community and the limitations on human rights and freedoms under Article 29 of the Universal Declaration of Human Rights: draft report prepared by Mrs. Erica Irene Daes, Special Rapporteur"

(E/CN.4/Sub.2/L.642/Add.2), para. 72; C.N. Okeke, *Controversial Subjects of Contemporary International Law*, Rotterdam, University Press, Part E, chap. 6, pp. 109-127; C. Lazarus, "Le statut des mouvements de libération nationale à l'Organisation des Nations Unies", *Annuaire français de droit international*, 1974, Paris, vol. XX, pp. 173-200; I. Szászy, "La règle juridique, le droit subjectif et le sujet de droit en droit international", *Mélanges offerts à Juraj Andrassy*, The Hague, M. Nijhoff, 1968, p. 345; G. Petit, "Les mouvements de libération nationale et le droit", *Annuaire du Tiers Monde*, Paris, Berger-Levrault, 1976.

<sup>87</sup> See the fifth report on State responsibility, by Mr. Roberto Ago, Special Rapporteur: the internationally wrongful act of the State, source of international responsibility (*Yearbook of the International Law Commission*, 1976, vol. II, part one (United Nations publication, Sales No. E.77.V.5) (Part I)), p. 5, document A/CN.4/291 and Add.1 and 2, para. 155, draft article 18. Draft article 18 became article 19 of the draft articles on State responsibility (*ibid.*, vol. II, part two (United Nations publication, Sales No. E.77.V.5) (Part II)), p. 73, document A/31/10, chap. III, sect. B, sub-sect. 1.

<sup>88</sup> See "Elimination of racial discrimination, Report of the Ad Hoc Working Group of Experts prepared under Commission resolution 8 (XXVI). Study concerning the question of apartheid from the point of view of international penal law" (E/CN.4/1075).

<sup>89</sup> *Status and Problems of Very Small States and Territories*, UNITAR Series No. 3, New York, 1969; L. Garcia Arias, "Los

mini-Estados y la Organización internacional", *Revista Española de Derecho Internacional*, vol. XXII, No. 4, Madrid, 1969, pp. 811-813, B. Benedict, *Problems of Smaller Territories*, (London, University of London, 1967); P.W. Blair, *The Ministate Dilemma* (New York, Carnegie Endowment for International Peace, Occasional Paper No. 6, 1967); D. Vital, *The Inequality of States: A Study of the Small Power in International Relations*, (Oxford, Clarendon Press, 1967); J. Chappez, "Les micro-Etats et les Nations Unies", *Annuaire français de droit international*, 1971, Paris, vol. XVII, pp. 541-551; M.M. Gunter, "What Happened to the United Nations Ministate Problem?", *The American Journal of International Law*, vol. 71, No. 1, January 1977, Washington, D.C., pp. 110-124.

<sup>90</sup> R. Cassin, Preface to the book of S. Calogeropoulos-Stratis, *Le droit des peuples à disposer d'eux-mêmes* (Brussels, 1973), p. 9.

<sup>91</sup> On this question and its implications for the possibility of very small States, without detriment to their right to independence, being excluded from full membership of the United Nations, a question worthy of study but a very difficult one not so far resolved, see the opinion of the Secretary-General of the United Nations in the *Introduction to the Annual Report of the Secretary-General on the work of the Organization, 16 June 1966-15 June 1967 (Official Records of the General Assembly, Twenty-second Session, Supplement No. 1A (A/6701/Add.1))*, para. 164, and Gómez Robledo (*op. cit.*), p. 11.

## Chapter II

### THE PRESENT STATE OF IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS RELATING TO THE RIGHT OF PEOPLES UNDER COLONIAL AND ALIEN DOMINATION TO SELF-DETERMINATION

#### A. General

109. The Special Rapporteur intends to divide his study of the present state of implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination into two parts.

110. The present chapter will list the resolutions adopted on the subject by the United Nations; they will be classified according to political, economic, social and cultural aspects. In listing and commenting very briefly on these United Nations resolutions, reference will of course be made to the action taken by various United Nations organs and the specialized agencies, and consideration will be given to the replies received up to the time at which the present study prepared.

111. Some of the methods and measures used for implementing or hastening the implementation of the United Nations resolutions will be studied. Also, there will be a general analysis of the results achieved in the implementation of these United Nations resolutions relating to the right of peoples to self-determination, and mention will be made of the obstacles and difficulties which, in the opinion of the Special Rapporteur, have arisen and which may still exist to prevent the complete and universal implementation of the right of peoples to self-determination.

112. In chapter III the specific situations listed in the report of the Secretary-General<sup>1</sup> will be recapitulated; a distinction will be drawn between territories which became independent in the period extending from the establishment of the United Nations to the date of preparation of this study<sup>2</sup> and the other situations to which the Secretary-General's report refers.<sup>3</sup> Next, a list will be given of territories which became independent or which, having exercised their right to self-determination, achieved a legal status other than independence between the time of the Secretary-General's report and the time at which the present study was prepared. Finally, an analysis will be made of the territories in which there still exists the problem of the final implementation of the right of peoples to self-determination through their achievement of independence or through other arrangements which are in conformity with the relevant United Nations resolutions. In these cases, the situation with regard to the implementation of those resolutions and the present state of the decolonization process will be studied.

#### B. Political, economic, social and cultural aspects of the right of peoples to self-determination

113. The Special Rapporteur has already pointed out that the right of peoples to self-determination encompasses political, economic, social and cultural aspects.<sup>4</sup> Before going into the content of each of these specific and necessary aspects of the general concept of self-determination, it should be emphasized that they are closely and indissolubly linked, since they are all interdependent and each of them can only be fully realized through the complete recognition and implementation of the others.

##### 1. POLITICAL ASPECTS

114. From the political point of view, the right of peoples under colonial and alien domination to self-determination has as its corollary their right to achieve independence, free association or integration with another independent State or the acquisition of any other freely determined status.<sup>5</sup> The achievement of any of these objectives "in the effective exercise of national sovereignty against any hegemony and independence"<sup>6</sup> must be the result of a free decision by the people concerned. Where the exercise of self-determination results in the establishment of a new, sovereign and independent State,<sup>7</sup> the right to self-determination itself provides the basis for the right of the people of the new State freely to choose its political system. Thus the right to self-determination does not cease when independence or another possible status is achieved and recognized; it extends into the permanent defence and maintenance of the independence or other status achieved as a result of the initial exercise of the right to self-determination.

115. The United Nations resolutions listed in the report of the Secretary-General<sup>8</sup> all refer to the political content of the right of peoples to self-determination, although in some cases they also deal with other aspects—particularly economic aspects—which are inseparable from the political consideration of the matter. Since the last addendum to the Secretary-General's report was issued,<sup>9</sup> a number of United Nations organs have adopted resolutions relating to self-determination. The resolutions adopted by the General Assembly, the Security Council, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities will be listed in the following paragraphs.

116. At its twenty-ninth session in 1974 the General Assembly adopted the following resolutions relating to this subject: 3210 (XXIX), Invitation to the Palestine Liberation Organization; 3236 (XXIX), Question of Palestine; 3237 (XXIX), Observer status for the Palestine Liberation Organization; 3280 (XXIX), Co-operation between the United Nations and the Organization of African Unity; 3328 (XXIX), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; 3240 (XXIX), Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories; 3324 (XXIX), Policies of *apartheid* of the Government of South Africa; 3281 (XXIX), Charter of Economic Rights and Duties of States; 3336 (XXIX), Permanent sovereignty over national resources in the occupied Arab territories; 3246 (XXIX), Importance of the universal realization of the rights of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights; 3284 (XXIX), Question of Papua New Guinea; 3285 (XXIX), Question of Niue; 3286 (XXIX), Question of Gibraltar; 3287 (XXIX), Question of the Seychelles; 3288 (XXIX), Question of the Gilbert and Ellice Islands; 3289 (XXIX), Question of Bermuda, British Virgin Islands, Cayman Islands, Monserrat, Turks and Caicos Islands and United States Virgin Islands; 3290 (XXIX), Question of American Samoa, Guam, New Hebrides, Pitcairn, St. Helena and Solomon Islands; 3291 (XXIX), Question of the Comoro Archipelago; 3292 (XXIX), Question of the Spanish Sahara; 3293 (XXIX), Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations; 3294 (XXIX), Question of Territories under Portuguese domination; 3295 (XXIX), Question of Namibia; 3296 (XXIX), United Nations Fund for Namibia; 3297 (XXIX) and 3298 (XXIX), Question of Southern Rhodesia; 3299 (XXIX), Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, Namibia and Territories under Portuguese domination and in all other Territories under colonial domination and efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa; 3300 (XXIX), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations; 3301 (XXIX), United Nations Educational Training Programme for Southern Africa; 3302 (XXIX), Offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories; 3314 (XXIX), Definition of aggression; 3318 (XXIX), Declaration on the Protection of Women and Children in Emergency and Armed conflict. In addition, at the same session, the General Assembly adopted the following decisions relating to this subject: Invitation to leaders of national liberation movements, 3 October 1974; Question of the Cocos (Keeling) Islands, 13 December 1974; Question of the Tokelau Islands, 13 December 1974; Question of Brunei, 13 December 1974; Question of the Falkland Islands

(Malvinas), 13 December 1974; Question of Belize, of French Somaliland, and of Antigua, Dominica, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent, 13 December 1974; Report of the Commission of Inquiry on the Reported Massacres in Mozambique, 13 December 1974.

117. At its thirtieth session (1975) the General Assembly adopted the following resolutions relating to this subject: 3363 (XXX), 3364 (XXX), 3365 (XXX), 3368 (XXX), 3375 (XXX), 3376 (XXX), 3385 (XXX), 3413 (XXX), 3481 (XXX), 3482 (XXX), 3486 (XXX), 3516 (XXX), 3382 (XXX), 3383 (XXX), 3396 (XXX), 3397 (XXX), 3398 (XXX), 3399 (XXX), 3400 (XXX), 3420 (XXX), 3421 (XXX), 3422 (XXX), 3423 (XXX), 3424 (XXX), 3425 (XXX), 3426 (XXX), 3427 (XXX), 3428 (XXX), 3429 (XXX), 3430 (XXX), 3431 (XXX), 3432 (XXX), 3433 (XXX), 3458 A and B (XXX), 3480 (XXX) and 3485 (XXX). In addition, at the same session (1975) the General Assembly adopted decisions on the following matters: appointments to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, appointments to the Committee on the Exercise of the Inalienable Rights of the Palestinian People, question of the Cocos (Keeling) Islands, question of St. Helena, question of Gibraltar, questions of the Falkland Islands (Malvinas) and of Antigua, Dominica, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent.

118. At its thirty-first session, in 1976 the General Assembly adopted the following resolutions relating to this subject: 31/4, Question of the Comorian island of Mayotte; 31/6, Policies of *apartheid* of the Government of South Africa; 31/20, Question of Palestine; 31/21, Admission of new Members to the United Nations; 31/29, Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations; 31/30, Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations; 31/44, Admission of the People's Republic of Angola to membership in the United Nations; 31/45, Question of Western Sahara; 31/46, Question of the Solomon Islands; 31/47, Question of the Gilbert Islands; 31/48, Question of Tokelau; 31/49, Question of the Falkland Islands (Malvinas); 31/50, Question of Belize; 31/51, Question of the New Hebrides; 31/52, Question of Bermuda, Cayman Islands, Monserrat and Turks and Caicos Islands; 31/53, Question of Timor; 31/54, Question of the British Virgin Islands; 31/55, Question of American Samoa; 31/56, Question of Brunei; 31/57, Question of the United States Virgin Islands; 31/58, Question of Guam; 31/59, Question of French Somaliland; 31/61, The situation in the Middle East; 31/62, Peace Conference on the Middle East; 31/104, Admission of the Independent State of Western Samoa to membership in the United Nations; 31/143, Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; 31/144, Dissemination of information on decolonization; 31/145, International Conference in Support of the Peoples of Zimbabwe and Namibia; 31/146, Situation in Namibia resulting

from the illegal occupation of the Territory by South Africa; 31/149, Action by intergovernmental and non-governmental organizations with respect to Namibia; 31/150, Dissemination of information on Namibia; 31/151, United Nations Fund for Namibia; 31/152, Observer status for the South West Africa People's Organization; 31/153, Nationhood Programme for Namibia; 31/154, Question of Southern Rhodesia. Also at its thirty-first session the General Assembly adopted the following decisions relating to this subject: Question of St. Helena; Question of Tuvalu; Question of Gibraltar; Question of the Cocos (Keeling) Islands; Questions of Pitcairn and of Antigua, Dominica, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent.

119. At its thirty-second session (1977) the General Assembly adopted the following resolutions and decisions relating to this subject: resolutions 32/1, 32/7, 32/9, 32/14, 32/22, 32/23, 32/24, 32/25, 32/26, 32/27, 32/28, 32/29, 32/30, 32/31, 32/32, 32/33, 32/34, 32/35, 32/36, 32/37, 32/38, 32/40, 32/41, 32/42, 32/43, 32/116 and 32/122; and decisions 32/407, 32/408, 32/409, 32/410, 32/411, 32/412 and 32/413.

120. The Security Council, because it has to deal in certain instances with some particularly serious political aspects of the right of peoples to self-determination, has naturally adopted resolutions on the subject. The relevant resolutions adopted up to 17 January 1974 are referred to in the report of the Secretary-General.<sup>10</sup> Since that date, the Security Council has adopted the following resolutions: 384 (1975) of 22 December 1975, relating to the territorial integrity of East Timor and the right of its people to self-determination; 366 (1974) of 17 December 1974 and 385 (1976) of 30 January 1976, concerning Namibia and the right of its people to self-determination and condemning South Africa for its illegal occupation of the Territory, its illegal application of its discriminatory laws and practices and its military build-up in Namibia; 386 (1976) of 17 March 1976, relating to Southern Rhodesia, the inalienable right of its people to self-determination and independence, the attitude of the Government of Mozambique and the assistance that should be provided to Mozambique, and 388 (1976) of 6 April 1976, reaffirming the sanctions to be imposed on Southern Rhodesia under Chapter VII of the Charter; and lastly 387 (1976) of 31 March 1976, relating to the aggression committed by South Africa against the People's Republic of Angola and condemning the utilization by South Africa of the Territory of Namibia to mount that aggression. The resolutions adopted by the Security Council during the remainder of 1976 and in 1977 on the cases of Namibia, South Africa and Southern Rhodesia are listed in the sections of this study dealing with the situations in question (see chap. III, Sect. D).

121. The Economic and Social Council too has adopted resolutions relating to the political and economic aspects of the right of peoples to self-determination. At its fifty-sixth session (1974) the following resolutions were adopted in this area: 1861 (LVI), Protection of women and children in emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence; 1863 (LVI), Decade for Action to Combat Racism and Racial Discrimination; 1864 (LVI), The adverse consequences for the enjoyment of human rights of political,

military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 1865 (LVI), The historical and current development of the right of peoples to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms; 1866 (LVI), Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; 1867 (LVI), Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries; 1868 (LVI), Activities of the *Ad Hoc* Working Group of Experts; 1869 (LVI), Report of the *Ad Hoc* Working Group of Experts. In addition, the Council adopted the following decisions relating to economic aspects of the right to self-determination at that session: 5 (LVI), Permanent sovereignty over natural resources; 7 (LVI), Further consideration of the item entitled "Study of the problems of raw materials and development".

122. The following resolutions, which also deal with political and economic aspects of the right of peoples to self-determination, were adopted at the fifty-seventh session of the Economic and Social Council (1974): 1892 (LVII), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations; 1908 (LVII), The impact of transnational corporations on the development process and on international relations; 1911 (LVII), Implementation of the Declaration and the Programme of Action on the Establishment of a New International Economic Order; mid-term review and appraisal of the International Development Strategy; special session of the General Assembly devoted to development and international economic co-operation. In addition, the Council adopted the following decision in this field at that session: 33 (LVII), Permanent sovereignty over natural resources.

123. At its fifty-eighth session (1975), the Economic and Social Council adopted the following resolutions relating to this subject: 1938 A and B (LVIII), Programme for the Decade for Action to Combat Racism and Racial Discrimination.

124. The following resolutions relating to this subject were adopted at the fifty-ninth session of the Economic and Social Council (1975): 1956 (LIX), Permanent sovereignty over natural resources, and 1978 (LIX), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations. The following resolution was adopted at the sixty-third session (1977): 2101 (LXIII), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and international institutions associated with the United Nations.

125. The following resolutions relating to this subject were adopted at the thirtieth session (1974) of

the Commission on Human Rights: 1 (XXX), Question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East; 3 (XXX), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 4 (XXX), The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms; 5 (XXX), Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; 6 (XXX), Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries; 7 (XXX), Activities of the *Ad Hoc* Working Group of Experts; 8 (XXX), Report of the *Ad Hoc* Working Group of Experts. The Commission also adopted a decision on the question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism.

126. The following resolutions relating to this subject were adopted at the thirty-first session (1975) of the Commission on Human Rights: 2 (XXXI), Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries; 3 (XXXI), Question of the realization of the right of peoples to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, taking into account in particular the promotion and protection of human rights and fundamental freedoms; 4 (XXXI), Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid*, in all countries, with particular reference to colonial and other dependent countries and territories; 5 (XXXI), Report of the *Ad Hoc* Working Group of Experts; 6 (XXXI), Question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East; 7 (XXXI), Study of situations which reveal a consistent pattern of gross violations of human rights; written and oral statements by non-governmental organizations in consultative status concerning human rights; 12 (XXXI), Periodic reports on economic, social and cultural rights. In addition, the Commission adopted the following decisions relating to this subject at that session (1975): 1 (XXXI), Admission to observer status of the national liberation movements recognized by the Organization of African Unity; 2 (XXXI), Admission to observer status of the Palestine Liberation Organization; 7 (XXXI), Study on situations which reveal a consistent pattern of gross violations of human rights; 15 (XXXI), Telegram to be sent to the Government of the United Kingdom of Great Britain and Northern Ireland.

127. At its thirty-second session (1976) the Commission on Human Rights adopted the following resolutions on matters relating to the right to self-determination: 2 (XXXII), Question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East; 5 (XXXII), Further promotion and encouragement of human rights and fundamental freedoms, including the question of a long-term programme of work of the Commission; 6 (XXXII), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 8 (XXXII), Report of the *Ad Hoc* Working Group of Experts on southern Africa; 9 (XXXII), Study in collaboration with the Sub-Commission on Prevention of Discrimination and Protection of Minorities of ways and means of ensuring the implementation of United Nations resolutions bearing on *apartheid*, racism and racial discrimination; implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

128. At its thirty-third session (1977) the Commission on Human Rights adopted the following resolutions relating to this subject: 1 A and B (XXXIII), Question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East; 6 A, B and C (XXXIII), Report of the *Ad Hoc* Working Group of Experts on southern Africa; 7 (XXXIII), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 13 (XXXIII), Implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

129. At its thirty-fourth session (1978) the Commission on Human Rights adopted the following resolutions relating to this subject: 2 (XXXIV), concerning the inalienable right of the Palestinian people to self-determination; 3 (XXXIV), concerning the right of peoples in general to self-determination and the cases of South Africa, Namibia and Zimbabwe; 5 (XXXIV), Violations a human rights in southern Africa: report of the *Ad Hoc* Working Group of Experts; 6 (XXXIV), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; and 7 (XXXIV), Implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

130. The following resolutions relating to this subject were adopted at the twenty-seventh session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1974): 2 (XXVII), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa; 3 (XXVII), The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms; 4 (XXVII), Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination; 8 (XXVII), The

question of the human rights of persons subjected to any form of detention or imprisonment; 11 (XXVII), Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism.

131. At its twenty-eighth session (1975) the Sub-Commission adopted the following resolutions relating to this subject: 1 (XXVIII), 2 (XXVIII) and 3 (XXVIII), Question of the violation of human rights and fundamental freedoms; 5 (XXVIII), Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism.

132. At its twenty-ninth session, in 1976, the Sub-Commission adopted the following resolution relating to this subject: 6 (XXIX), The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms.

133. At its thirtieth session (1977) the Sub-Commission adopted the following resolutions relating to this subject: 1 (XXX), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 2 (XXX), The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms; and 7 (XXX), Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination.

134. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and other United Nations bodies have been constantly active in this field and have adopted a large number of resolutions — referred to and listed separately — on the right of peoples to self-determination.

## 2. ECONOMIC ASPECTS

135. The economic aspects of the right of peoples to self-determination are manifested, first, in the right of all peoples to determine, in freedom and sovereignty, the economic system or régime under which they are to live. Where a people is still subject to colonial or alien domination this right already exists, even though the colonial Power may ignore it and violate it. Where the people has formed a free and sovereign State or has established some other political formula through the exercise of the right to self-determination, the people of that State naturally retains its right freely to determine the economic régime which is to exist in that State. This right will be of lasting efficacy and will continue to take effect in the future, which is of particular significance, in view of all the neo-colonialistic and neo-imperialistic schemes, whatever form they make take, to dominate the new States which have come into being as a result of the exercise of the right to

political self-determination, through their power or unlawful intervention in the economic field.

136. Without prejudice to this general meaning of self-determination from the economic standpoint, it is necessary to specify that the economic content of the right of peoples to self-determination finds its expression in particular — without prejudice to many other different manifestations — in the right to permanent sovereignty over natural resources,<sup>11</sup> a question which covers the problems raised by nationalizations<sup>12</sup> and the harmful activities that may be undertaken in this area by transnational or multinational enterprises.<sup>13</sup>

137. This right of peoples to self-determination exists, in its economic aspects, in all the above-mentioned manifestations, both in cases where the people concerned has not yet attained its political self-determination and is still struggling against colonial and alien domination, and where the people has formed a political entity or sovereign State as a result of the prior exercise of its right to self-determination.

138. The resolutions of the General Assembly,<sup>14</sup> the Economic and Social Council,<sup>15</sup> the United Nations Conference on Trade and Development and the Trade and Development Board,<sup>16</sup> the United Nations Council for Namibia<sup>17</sup> and the World Conference of the International Women's Year,<sup>18</sup> Habitat: United Nations Conference on Human Settlements,<sup>19</sup> the United Nations Water Conference, the Committee on Natural Resources,<sup>20</sup> as well as the two International Covenants on Human Rights, have affirmed, upheld and reiterated this right to permanent sovereignty over natural resources and have developed its implications, especially with regard to the resultant right to the nationalization of those resources where they are owned by foreign capital. In accordance with the pertinent principles of contemporary international law, there has been due recognition both of the competence of national law to regulate matters relating to nationalization and of the jurisdiction of domestic courts to deal with disputes,<sup>21</sup> except where some other jurisdiction has been freely accepted by the State which nationalizes its natural resources in exercise of its sovereignty.

139. The Charter of Economic Rights and Duties of States, adopted in General Assembly resolution 3281 (XXIX) of 12 December 1974, refers expressly to and affirms this right of each State to "nationalize, expropriate or transfer ownership of foreign property" in article 2, para. 2 (c).

140. The consideration of these issues calls for a clear awareness of how, in some cases, the full exercise of the right of peoples to self-determination can be adversely affected by transnational or multinational corporations<sup>22</sup> and particular foreign investments, as evidenced by the activities engaged in by certain economic interests — interests repeatedly denounced and condemned by the United Nations — with regard to the effective exercise of the right to self-determination.<sup>23</sup>

141. The Charter of Economic Rights and Duties of States stipulates in article 16, paragraph 2: "No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force" (art. 16, para. 2). The Special Rapporteur stresses the importance of this

provision in view of certain foreign investments, especially in southern Africa, which clearly impede the process of implementing the right of peoples to self-determination.

142. The General Assembly has repeatedly denounced foreign economic activities which are impeding the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples both in general and with particular reference to Namibia and Southern Rhodesia, drawing attention to the adverse consequences for the enjoyment of human rights of economic assistance given to colonial and racist régimes in southern Africa.<sup>24</sup>

143. It is obvious that, unless the right to permanent sovereignty over natural resources is implemented effectively and the factors mentioned in the preceding paragraphs are recognized, the right of peoples to self-determination cannot be considered to be exercised fully; hence the need to maintain, continue and affirm the action taken in this respect by the United Nations.

144. The full recognition and effective exercise of the right of peoples to self-determination and the elimination of colonialism and neo-colonialism are prerequisites for development. The legal acceptance and truly effective exercise of the right to complete development of peoples struggling for their self-determination — a right which is, of course, also held by States, especially the developing States — can be achieved only if the right of peoples to self-determination is recognized and implemented.<sup>25</sup> The Charter of Economic Rights and Duties of States affirms this principle in article 16, which recognizes the duty of all States, individually and collectively, to eliminate colonialism and neo-colonialism, adding that “States which practise such coercive policies are economically responsible to the countries, territories, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples”.<sup>26</sup> The Powers occupying them, as a result of an unlawful action or aggression, do not have the right to exploit the wealth and natural resources of the territories which they are occupying illegally. Hence, the marketing and use in all its forms of the natural resources and wealth belonging to those peoples, which the colonialist Powers occupying the territory in which they live, are enacting illegally, is illegal, with all the legal consequences ensuing from that fact.

145. An interesting application of this rule and of the principles inspiring it, and an extremely important contribution to the requisite policy of preventing the plundering of natural resources by colonial and alien rulers, is the Decree on the Natural Resources of Namibia adopted by the United Nations Council for Namibia on 27 September 1974, to which special reference is made further on (paras. 174-178) when the work of the Council is examined. The Commission on Human Rights, in its resolution 1 (XXXIV), Question of the violation of human rights in the occupied Arab territories, including Palestine, approved these concepts and condemned, among other Israeli policies and practices, “The illegal exploitation of the natural wealth, resources and population of the occupied territories” (para. 4 (j)).

146. The United Nations Water Conference (Mar del Plata, Argentina, March 1977) adopted a resolution directly linked to the right of peoples to self-determination and referring to their permanent sovereignty over natural resources, entitled “Water policies in the occupied territories”,<sup>27</sup> the content of which is reproduced in foot-note 14 to this chapter and which deals specifically with the legitimate struggle of peoples to regain effective control over their natural resources.

147. Habitat: United Nations Conference on Human Settlements included in its Declaration of Principles, in paragraphs 7 and 8 of section II (General Principles), reproduced in foot-note 19 to this chapter, an express formulation of the economic content of the right of peoples to self-determination.<sup>28</sup>

148. Article 16 of the Charter of Economic Rights and Duties of States has an important bearing on the question of the right of self-determination—an idea to which the Special Rapporteur has already referred—and on the realization of the right to development,<sup>29</sup> and merits special attention.

149. The Special Rapporteur believes these economic aspects of the right to self-determination to be of the utmost importance, not only in the advance towards independence by peoples now under domination but also in the general endeavour to protect and safeguard national independence and sovereignty from those new forms of colonialism which, although ostensibly co-existing with outward, formal political independence, seek to establish economic exploitation and dependence.

150. The resolutions of the General Assembly concerning the new international economic order (3201 (S-VI) and 3202 (S-VI) of 1 May 1974 and 3362 (S-VII) of 16 September 1975), the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX) of 12 December 1974 and resolution 31/178 of 21 December 1976) are of particular importance for the study of these matters. Article 34 of the Charter of Economic Rights and Duties of States is of special interest: it provides that an item on the Charter shall be included in the agenda of the General Assembly at its thirtieth session, and in the agenda of every fifth session thereafter, so as to permit a systematic and comprehensive consideration of the implementation of the Charter, covering both progress achieved and any improvements and additions which might become necessary. In pursuance of this, the General Assembly, in resolution 3486 (XXX) of 12 December 1975, established a special procedure for the implementation of article 34 of the Charter: it entrusted the Economic and Social Council with the task of reviewing the implementation of the Charter with a view to the consideration of the matter by the General Assembly, and it requested UNCTAD, UNIDO, the specialized agencies, IAEA and the regional commissions of the United Nations to continue to study the progress achieved in the implementation of the Charter and to report to the General Assembly through the Economic and Social Council. Matters concerning the implementation of resolutions 2626 (XXV), 3202 (S-VI), 3281 (XXIX) and 3362 (S-VII) were dealt with in resolution 31/178.

151. In reply to the questionnaire, ECLA,<sup>30</sup> UNCTAD,<sup>31</sup> UNIDO<sup>32</sup> and FAO<sup>33</sup> have drawn atten-

tion to a number of matters connected with the economic aspects of the right to self-determination as defined in the provisions laid down by the United Nations or by themselves; their comments follow the general lines indicated in the present report.

### 3. SOCIAL ASPECTS

152. Every people has the right to choose and determine the social system under which it is to live, in accordance with its free and sovereign will and with due respect for its traditions and special characteristics.

153. More specifically, it may be said that the social aspects of the right of peoples to self-determination are related, in particular, to the promotion of social justice, to which every people is entitled<sup>34</sup> and which, in its broadest sense, implies the right to the effective enjoyment by all the individual members of a particular people of their economic and social rights without any discrimination whatsoever.

154. This aspect of self-determination is covered by various General Assembly resolutions,<sup>35</sup> especially the Declaration on Social Progress and Development,<sup>36</sup> which proclaims "national independence based on the right of peoples to self-determination" to be a primary condition of social progress and development.<sup>37</sup> Other provisions of the Declaration are directly concerned with various aspects of the right of peoples to self-determination.<sup>38</sup> The Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace<sup>39</sup> also refers to the question.

155. The texts mentioned which deal with the economic aspects of the right of self-determination, particularly the International Development Strategy for the Second United Nations Development Decade, the resolutions relating to the new international economic order and the Charter of Economic Rights and Duties of States, take into consideration, expressly or implicitly, the social content of development and consequently the social aspects of the right to self-determination; today, development, which is not the same as mere economic growth, is inconceivable without effective respect for the right of peoples to self-determination.

156. In its letter of 16 March 1975, the International Labour Office listed the resolutions adopted in 1971 and 1972 by the International Labour Conference and the Governing Body relating to the right of peoples to self-determination, with special reference to social aspects.<sup>40</sup>

157. The World Health Organization, in its reply of 22 April 1975, referred to the social rights to health and stated: "WHO sees the right to self-determination as a matter which is inseparable from fundamental human rights including 'the right to health'."

### 4. CULTURAL ASPECTS

158. Every people, in the exercise of its right to self-determination, has the right to determine and establish the cultural régime or system under which it is to live; this implies recognition of its right to regain, enjoy and enrich its cultural heritage,<sup>41</sup> and the affirmation of the right of all its members to education and culture.

159. A people subject to colonial and alien domination has the right to struggle to prevent its heritage, values and cultural identity from being destroyed or affected by the colonial or alien Power. Where that people, through the exercise of its right to self-determination, has formed a political entity or established a sovereign State, the cultural content of its right to self-determination remains in effect, even though it is now governed by the legal and political situation which this people has freely accepted.

160. The efficacy of the right of peoples to self-determination in its cultural aspects is essential in order that a people may be aware of its rights and consequently be fully capable of fighting for their recognition and implementation.

161. The Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference of UNESCO on 4 November 1966, recognizes that every people has the right and duty to develop its culture, and mentions in its preamble the most important United Nations resolutions relating to recognition of the right of peoples to self-determination.

162. The General Assembly of the United Nations, in resolution 3148 (XXVIII) of 14 December 1973, entitled "Preservation and further development of cultural values", has expanded upon the cultural aspects of the right to self-determination. These principles were repeated and updated in resolution 31/39 of 30 November 1976, bearing the same title.

163. Paragraph 9 of section II of the Declaration of Principles adopted by Habitat: United Nations Conference on Human Settlements states in this regard:

Every country should have the right to be a sovereign inheritor of its own cultural values created throughout its history, and has the duty to preserve them as an integral part of the cultural heritage of mankind.

164. Other resolutions of the General Assembly, such as resolution 845 (IX) of 22 November 1954, entitled "Educational advancement in Non-Self-Governing Territories" and referred to by the Government of the Philippines in its reply,<sup>42</sup> are concerned with this aspect of the right of self-determination. This is because the cultural advancement of a people under colonial and alien domination will not only secure the maintenance and development of its cultural heritage but also be a prerequisite for the exercise of its right to self-determination in both its political and its social, economic and cultural aspects.<sup>43</sup> The General Assembly has also drawn attention to the need for young people to be brought up in "respect for fundamental human rights and for the right of peoples to self-determination"<sup>44</sup>

165. UNESCO, in its reply of 23 April 1975, made a detailed analysis of the work it has done to affirm the cultural aspects of the right to self-determination. Without overlooking other contributions by UNESCO in regard to the right of peoples to self-determination, which will be considered separately, particular mention should be made of the resolutions adopted by the General Conference on 21 November 1974<sup>45</sup> and 22 November 1974,<sup>46</sup> which serve as a basis for a broad plan of action that specifically includes questions connected with the right of peoples to self-determination.

**C. Measures and methods for implementing United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination**

166. In this section, the Special Rapporteur will briefly analyse the forms taken by United Nations action to achieve effective recognition of the right of peoples to self-determination.

167. Rather than study and comment on the action taken by each individual United Nations organ concerned, by the specialized agencies and by regional intergovernmental organizations which co-operate or assist in the implementation of United Nations resolutions, the approach will be to give a general account, with examples, of the ways and means employed now and in the past in pursuing the complex process of implementing and effectively recognizing the right of peoples under colonial and alien domination to self-determination.

168. The General Assembly has not only dealt with the question of the right to self-determination in a long series of resolutions, summarized in the report of the Secretary-General,<sup>47</sup> which refer both to its general aspects and to the specific situations that have existed or still exist; it has also pronounced upon the economic, social and cultural aspects of this right. These various resolutions, which bring out the essentials of the process of recognizing, affirming and implementing the right of peoples under colonial and alien domination to self-determination, have embraced practically all the problems and questions raised by decolonization, involving the use of a wide range of methods and procedures. From declarations of principle—foremost among which, because of its historic impact, is resolution 1514 (X)—to the treatment of specific problems involved in the implementation of the right to self-determination, the entire subject has been covered in a large body of resolutions in which the General Assembly, acting in its normative capacity, has tackled and resolved the new issues that have arisen in this area, thereby giving a decisive impetus to decolonization. For instance, the Assembly has provided for United Nations intervention in specific cases of implementation of the right of self-determination, with the aim of ensuring that the exercise of this right shall reflect the free and independent will of the people concerned as expressed through consultation, except where the particular circumstances of an individual case make this unnecessary or impossible. The Assembly has also dealt with the questions of the legitimacy of the struggle of peoples to free themselves from colonial and alien domination and from foreign subjugation by all possible means, including armed struggle,<sup>48</sup> and of national liberation movements, pointing out the characteristics of their struggle and the need to support their action, which is undoubtedly essential if the efforts to achieve the effective implementation of the right to self-determination are to be successful.<sup>49</sup> It has foreseen the need to protect women and children in emergency situations and armed conflicts in the struggle for peace, self-determination, national liberation and independence.<sup>50</sup> It has drawn attention to and denounced the activities of economic interests which affect and impede recognition

of the right of peoples to self-determination,<sup>51</sup> and it has solemnly proclaimed on numerous occasions the fundamental nature of the right of peoples to self-determination and its place within the system of the United Nations Charter.<sup>52</sup>

169. Since racial discrimination and *apartheid* lie at the very root of the denial of the right of peoples under colonial and alien domination to self-determination, the General Assembly has led the international effort to combat and eliminate these scourges of mankind, adopting the International Convention on the Elimination of All Forms of Racial Discrimination<sup>53</sup> and the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.<sup>54</sup>

170. The special nature of the powers granted to the Security Council under Article 24 of the Charter of the United Nations is indicative of the importance of the resolutions adopted by the Council and its potential role in ensuring the implementation of the right of self-determination, especially in cases where the Council acts under the provisions of Chapter VII of the Charter. The Council's ability to act is of course subject to the voting system applicable to the adoption of its resolutions (Art. 27, para. 3) and to the political considerations which that implies. The Council has adopted many resolutions bearing on the right of peoples under colonial and alien domination to self-determination, especially in regard to the situations in Namibia, Southern Rhodesia and the territories formerly under Portuguese administration. The resolutions on this subject adopted up to 17 January 1974 are listed in the report of the Secretary-General.<sup>55</sup> Since that date, the Council has also dealt with the question of Palestine; it has invited the Palestine Liberation Organization to participate in its debates; it has considered the questions of East Timor (resolution 384 (1975)) and Angola (resolution 387 (1976)); and it has again dealt with Southern Rhodesia (resolutions 386 (1976) and 388 (1976)) and Namibia (resolutions 366 (1974) and 385 (1976)). In 1977 the Council adopted resolution 403 (1977), of 14 January, concerning Southern Rhodesia, and resolution 417 (1977), of 31 October, concerning the question of South Africa.

171. The Economic and Social Council has also adopted a long series of resolutions on the right of peoples to self-determination, comprising those listed in the above-mentioned report of the Secretary-General,<sup>56</sup> and those subsequently adopted.<sup>57</sup> In these various resolutions, which have already been listed in this study, the Council deals not only with the strictly economic and social aspects of the right of peoples to self-determination but also with political and cultural matters connected with that right. This is of great relevance, not only because of the express references to cultural, educational and health matters in Article 62, paragraph 1, of the Charter of the United Nations, but also because the right to self-determination, as a human right and a condition for the exercise of all other rights and freedoms, is one of the matters falling within the competence of the Economic and Social Council under Article 62, paragraph 2 of the Charter.

172. In paragraph 6 of its resolution 2311 (XXII), of 14 December 1967, the General Assembly requested

the Economic and Social Council, in consultation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to consider appropriate measures for the co-ordination of the policies and activities of the specialized agencies in implementing the relevant resolutions of the General Assembly. In resolution 2621 (XXV) of 12 October 1970 the General Assembly laid down the forms which this co-ordination should take and the principles by which it should be guided. In resolution 3118 (XXVIII) of 12 December 1973 the General Assembly renewed its previous requests to the Council to continue the consideration of appropriate measures for co-ordinating the policies and activities of the organizations concerned in regard to this question and, in that connexion, drew attention, *inter alia*, to the related discussions in the Special Committee and to the work of the latter's subsidiary bodies on the subject.<sup>58</sup> The question has been under examination by the Economic and Social Council since its forty-fifth session, in 1968. At its fifty-seventh session, in 1974, the question was considered by the Policy and Programme Co-ordination Committee.<sup>59</sup> The Committee had before it a report submitted by the Secretary-General under paragraph 10 (a) of General Assembly resolution 3118 (XXVIII) on the action taken by the specialized agencies and other organizations concerned (A/9638 and Add.1, Add.1/Corr.1, and Add.2-5), transmitted to the Council as document E/5542 and Corr.1, Add.1 and Corr.1, and Add.2 and 3. The annual report of the Administrative Committee on Co-ordination for 1973-1974 (E/5488) also contained information on the co-ordination aspects of the matter. In addition, the Committee had before it the report of the President of the Council on consultations held with the Chairman of the Special Committee under the terms of General Assembly resolution 3118 (XXVIII) and Council resolution 1804 (LV) of 7 August 1973 (E/5561). At its 543rd meeting, the Committee approved draft resolution E/AC.24/L.499/Rev.1, which was adopted by the Economic and Social Council at its 1919th meeting, on 1 August 1974.<sup>60</sup> By this resolution the Council, *inter alia*, called upon all the specialized agencies and organizations within the United Nations system to discharge their responsibilities, as outlined in the resolutions of the General Assembly and the Economic and Social Council, of providing moral and material assistance to the national liberation movements and the peoples in the liberated areas, and to work out and channel such assistance through the Organization of African Unity; to accelerate the full and speedy implementation of the provisions of General Assembly resolution 3118 (XXVIII) and other related resolutions adopted by United Nations bodies; to make appropriate procedural arrangements immediately and, if necessary, amend their relevant instruments, with a view to enabling the representatives of the liberation movements recognized by OAU to participate fully as observers in all proceedings relating to their countries, particularly so as to ensure that assistance projects of the agencies and organizations were carried out for the benefit of the national liberation movements and peoples of the liberated areas; and to consider defraying all travel and other related expenses of

representatives of the national liberation movements invited to attend such proceedings. The Council urged the executive heads of the organizations concerned to formulate and submit to their respective governing bodies or legislative organs at their forthcoming sessions, as a matter of priority and with the active co-operation or OAU, specific programmes of assistance for the peoples of the colonial territories and their national liberation movements, and to report to the Economic and Social Council at its fifty-ninth session, setting out a detailed account of the action taken and envisaged by their respective organizations; reiterated its request to the specialized agencies and other organizations within the United Nations system which had not yet done so to discontinue all support and assistance to the Government of South Africa and the illegal régime in Southern Rhodesia so long as those régimes persisted in their policies of colonial and alien domination, and also to refrain from taking any action which might imply recognition of the legitimacy of those régimes' colonial and alien domination; and decided to keep this question under continuous review.

173. In resolution 1978 (LIX) of 31 July 1975, the Council, after reaffirming the legitimacy of the struggle of colonial peoples to achieve freedom and independence, reiterated and elaborated upon the various provisions of resolution 1892 (LVII) of 1 August 1974 regarding co-ordination between the organizations within the United Nations system in providing assistance and support to peoples struggling for their right to self-determination.

174. The activities of the United Nations Council for Namibia<sup>61</sup> and of the United Nations Commissioner for Namibia possess an importance in relation to the subject of this study which deserves to be emphasized. The Mandate exercised by South Africa over South West Africa having been terminated for violation of the obligations conferred upon South Africa as Mandatory Power,<sup>62</sup> the activities in question are aimed at preparing this Territory, which is still today illegally occupied by South Africa, for exercise of the right of self-determination in all its aspects by the people of Namibia, and at preserving and safeguarding the Territory's natural resources.

175. The United Nations Council for Namibia has also been carrying out valuable activities in exposing the illegal presence and repressive policies of the South African régime in Namibia; assisting Namibians by financing education and training programmes; providing travel and identity documents; ensuring that Namibians participate fully in the work of the Council; taking action to ensure compliance of Member States with United Nations resolutions on Namibia, and with the International Court of Justice's advisory opinion of 21 June 1971; exposing the activities of foreign economic interests in Namibia by showing how those activities support the illegal South African presence there; consulting with Governments of Member States to determine ways of increasing pressure for a South African withdrawal; representing Namibian interests in international organizations and conferences; mobilizing support among international bodies of all kinds; promoting publicity on Namibia; raising funds for and administering the United Nations Fund for

Namibia; and conducting, through the United Nations Fund for Namibia, programmes for the education and training of Namibians in a number of African countries and elsewhere.<sup>63</sup>

176. In reply to a request by the Special Rapporteur for information and comments, the Office of the United Nations Commissioner for Namibia, in a letter dated 18 April 1975, referred to various activities of the Council for Namibia. The letter emphasized the importance of the Decree on the Natural Resources of Namibia enacted by the Council for Namibia on 27 September 1974 and endorsed by the General Assembly in resolution 3295 (XXIX). This Decree<sup>64</sup> states:

1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export, or distribute any natural resource, whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or such consent;

2. Any permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the "Administration of South West Africa", or their predecessors, is null, void and of no force or effect;

3. No animal resource, mineral, or other natural resource produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever to any place whatsoever outside the territorial limits of Namibia by any person or body, whether corporate or unincorporated, without the consent and permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council;

4. Any animal, mineral or other natural resource produced in or emanating from the Territory of Namibia which shall be taken from the said Territory without the consent and written authority of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by or on behalf of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable for damages by the future Government of an independent Namibia;

7. For the purposes of paragraphs 1 to 5 above and in order to give effect to this decree, the United Nations Council for Namibia hereby authorizes the United Nations Commissioner for Namibia, in accordance with General Assembly resolution 2248 (S-V), to take the necessary steps after consultations with the President.

Special emphasis should be placed on the importance of this Decree and its innovative approach to the subject. However, there can be no denying that it raises complex legal, economic and commercial questions; these were considered at the International Conference on Namibia and Human Rights organized at Dakar in January 1976 by the International Institute of Human Rights.

177. The United Nations Council for Namibia, at its 209th meeting, held on 27 September 1974, decided to establish an Institute for Namibia, the purpose of which is to enable Namibians, under the aegis of the United Nations Council for Namibia, to undertake research, training, planning and related activities with special reference to the struggle for freedom of the Namibians and the establishment of an independent State of Namibia.<sup>65</sup> The Institute was expected to start operations in the latter half of 1975.

178. A mission from the United Nations Council for Namibia visited Asia for consultations with India, Indonesia and Japan from 26 April to 15 May 1975. A mission also visited Geneva for consultations with the specialized agencies. The Council has thus engaged and is engaging in a wide and complex range of activities; within the limits imposed on it, it has sought effective action, not merely affirming and reiterating principles but also embarking on practical measures designed to contribute towards the exercise by the Namibian people of their right to self-determination.

179. The Trusteeship Council, a principal organ of the United Nations under Article 7 of the Charter, has performed and continues to perform valuable service in carrying out the duties assigned to it under Chapter XII (Articles 75-85) and Chapter XIII (Articles 86-91) of the Charter. During 1973-1974 the Council examined the annual reports of the Administering Authorities of Papua New Guinea and the Trust Territory of the Pacific Islands. It also examined communications and petitions relating to those Territories. It discussed the attainment of self-government or independence by the Trust Territories and the situation in those Territories with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. During their examination of conditions in the Trust Territories, members of the Council paid particular attention to the measures to be taken to transfer all powers to the peoples of those Territories in accordance with their freely expressed wishes in order to enable them to proceed to self-government or full independence within the shortest possible time. In the case of Papua New Guinea, the Council noted that the date of independence was expected to occur in advance of the thirtieth session of the General Assembly, beginning in September 1975, and stated that, mindful of its mandate under the Charter of the United Nations and of the provisions of the Trusteeship Agreement, and bearing in mind the provisions of relevant General Assembly resolutions, including the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in resolution 1514 (XV) of 14 December 1960, and resolution 1541 (XV) of 15 December 1960, the Council was seeking to ensure that the people of the Territory achieve self-determination as swiftly as feasible.<sup>66</sup>

180. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples has, as was to be expected, done vitally important and valuable work in promoting the process of implementation of the right to self-determination.

Its successive reports,<sup>67</sup> which contain a detailed analysis of the situation in each territory and the resultant resolutions adopted by the Committee, have formed the general basis for the General Assembly's own resolutions on each specific situation, the adoption of which has invariably been accompanied by warm praise for the Special Committee's work. The Committee's future activities are of vital importance in actively directing and stimulating the irreversible process of full decolonization. The Special Rapporteur wishes to emphasize the particularly important role which visiting missions can and should play in these activities. The reports of the Special Committee contain a review of the over-all situation in the territories still under colonial and alien domination. In analysing these specific cases, the Special Rapporteur need not of course repeat what the Special Committee has said on the subject, since reference may be made to the Committee's reports. In 1976 the Special Committee's *Ad Hoc* Group concerned itself particularly with the study of the cases of Southern Rhodesia and Namibia, and held its working meetings in Africa. The Special Committee's report on its activities in 1977 is cited in connexion with each of the cases referred to in the discussion of specific situations in chapter III of the present study.<sup>68</sup>

181. The Special Committee against *Apartheid* has carried out a task of very great importance as a contribution to the struggle for the universal recognition and realization of the right of self-determination,<sup>69</sup> since *apartheid*, which is directly and inevitably bound up with colonialism, represents a monstrous violation of all fundamental human rights, is a crime recognized as such under international law, and implies the total negation of the right of peoples to self-determination.

182. The Committee on the Elimination of Racial Discrimination, in examining petitions, reports and other information relating to Trust and Non-Self-Governing Territories and all other territories covered by General Assembly resolution 1514 (XV), in conformity with article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>70</sup> has embarked on an undertaking of the utmost importance<sup>71</sup> in United Nations efforts to establish and realize the right of people to self-determination. Efforts to eliminate racial discrimination are, in fact, one of the main ways of promoting the exercise of the right to self-determination, since colonialism necessarily implies racial discrimination. In its decision 2 (XI) of 7 April 1975,<sup>72</sup> the Committee, recalling its general recommendation III and General Assembly resolutions 3057 (XXVIII) and 3223 (XXIX), made an important declaration of principle regarding racist régimes, the danger which they involve, and their international relations, which naturally affect the exercise of the right of peoples to self-determination.

183. The Secretary-General's report lists the decisions of the International Conference on Human Rights held at Teheran from 22 April to 13 May 1968 that relate to the right of peoples to self-determination.<sup>73</sup> The Special Rapporteur has already commented on these decisions in this study (see para. 2 above).

184. The Commission on Human Rights has repeatedly adopted numerous resolutions relating to the right of peoples to self-determination; these are listed in the report of the Secretary General.<sup>74</sup> Since 14 January 1974, the following resolutions directly concerning this question have been adopted: 3 (XXX), 4 (XXX), 5 (XXX), 6 (XXX); at its thirty-first session the Commission adopted resolutions 2 (XXXI), 3 (XXXI) and 4 (XXXI). At its thirty-second session it adopted resolutions 2 (XXXII), 5 (XXXII), 6 (XXXII), 8 (XXXII) and 9 (XXXII) relevant to the subject dealt with in this study. At its thirty-third session it adopted the following resolutions in this field: 1 A and B (XXXIII), Question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East; 4 (XXXIII), Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries; 5 (XXXIII), Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories; 6 A, B and C (XXXIII), Report of the *Ad Hoc* Working Group of Experts on southern Africa; 7 (XXXIII), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 13 (XXXIII), Implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. At its thirty-fourth session, the Commission adopted the following resolutions relating to the subject: 2 (XXXIV) concerning the inalienable right of the Palestinian people to self-determination; 3 (XXXIV) concerning the right of peoples in general to self-determination and the cases of Namibia, South Africa and Zimbabwe; 5 (XXXIV), Violations of human rights in southern Africa: report of the *Ad Hoc* Working Group of Experts; 6 (XXXIV), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; and 7 (XXXIV), Implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

185. Attention should also be drawn to decisions 1 (XXXI) and 2 (XXXI) of the Commission on Human Rights dated 3 February 1975 concerning the admission as observers of national liberation movements recognized by OAU and of the Palestine Liberation Organization, as requested by the League of Arab States.

186. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has adopted several resolutions on this subject they are listed in the above-mentioned report of the Secretary-General.<sup>75</sup> After the issue of that report, the Sub-Commission adopted, at its twenty-seventh session, the following resolutions relating to the matter under study; 3 (XXVII), 4 (XXVII) and 8 (XXVII). At its twenty-eighth session, it adopted the following resolutions in this field: 1 (XXVIII), Question of the violation of human rights and fundamental freedoms (Cyprus);

3 (XXVIII), Question of the violation of human rights and fundamental freedoms (Angola); 5 (XXVIII), Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism; and at its twenty ninth session: 2 D (XXIX), Question of the violation of human rights and fundamental freedoms (Western Sahara); 5 (XXIX), Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism; 7 (XXIX), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa. At its thirtieth session the Sub-Commission adopted three resolutions relating to the subject: 1 (XXX), The adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa; 2 (XXX), The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms; and 7 (XXX), Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination.

187. UNDP stated in its reply to the request for information transmitted on 9 December 1974 that the Governing Council of UNDP "has given active and sustained consideration to the implementation of General Assembly resolutions concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples". In its last report, the Governing Council of UNDP<sup>76</sup> described action carried out "in favour of colonial peoples and countries". At its 438th meeting, during its eighteenth session, the Governing Council, by consensus: took note of the Administrator's report contained in document DP/66 on measures taken with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in accordance with General Assembly resolutions 1514 (XV) and 3118 (XXVIII); approved the recommendations contained therein, in particular those in paragraph 8 of the report, as regards the need to observe flexibility in granting assistance to colonial countries and peoples; authorized the Administrator to assist the colonial countries and peoples from the general resources of the Programme; approved the recommendation of the Administrator to set up as an interim measure a trust fund to supplement the resources to be obtained from the general resources of the Programme; invited Member States to make additional contributions to this end, including appropriate resources to the trust fund in favour of the colonial countries and peoples; requested the Administrator to report on action taken and the situation of the programme in favour of the colonial countries and peoples at the nineteenth session of the Council; and decided, in accordance with the provisions of General Assembly resolution 3118 (XXVIII), that all necessary measures be taken by the Administrator to ensure that the national liberation movements recognized by OAU were represented in the sessions of the Governing

Council of UNDP when dealing with matters pertaining to the peoples of their respective colonial territories in Africa. At its nineteenth session, the Governing Council decided that at its twentieth session it would establish projected amounts of UNDP assistances to be given to countries and territories acceding to independence. It appealed to Member States for increased financial support for economic and social rehabilitation programmes in those countries, as well as for aid to national liberation movements recognized by OAU.<sup>77</sup>

188. The Administrative Committee on Co-ordination has been co-ordinating the activities undertaken by the organizations of the United Nations system, in accordance with General Assembly resolution 3118 (XXVIII) and other relevant resolutions, with a view to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>78</sup> The Committee co-operates closely with the *Ad Hoc* Working Group of the Special Committee on decolonization, which follows the implementation of the Declaration by the specialized agencies.<sup>79</sup>

189. The organizations of the United Nations system have taken a number of steps towards the implementation of the Declaration, particularly with regard to the participation of national liberation movements in relevant meetings and conferences. Further progress has also been made in working out, in co-operation with OAU, concrete programmes of assistance to the peoples of the colonial countries of Africa and in providing assistance to refugees.

190. The United Nations Educational and Training Programme for Southern Africa<sup>80</sup> is continuing to grant assistance in the form of individual scholarships tenable in established schools, colleges and universities, primarily in independent African States and outside the Territories concerned, to Namibians and Southern Rhodesians, to persons from the former Territories under Portuguese administration and to South Africans. The organizations concerned within the United Nations system have offered to co-operate with the Educational and Training Programme by making available their facilities to assist in the selection, placement and productive employment of beneficiaries of the Programme. The Administrative Committee on Co-ordination has arranged for a regular interchange of information among the organizations which are providing fellowships and scholarships with a view to achieving better co-ordination in this area.<sup>81</sup>

191. By its resolution 3376 (XXX) of 10 November 1975, the General Assembly decided to establish a Committee on the Exercise of the Inalienable Rights of the Palestinian People.<sup>82</sup> The Committee met in April 1976 and adopted a report on the subject,<sup>83</sup> which deals especially with the question of the right of the Palestinian people to self-determination and to national independence and sovereignty (paras. 33-35 and 60). In accordance with General Assembly resolution 3376 (XXX), the Security Council included the matter in its agenda (1924th meeting of 9 June 1976), and, among the measures adopted, it invited an observer from the Palestine Liberation Organization to participate in its deliberations. At its 1938th meeting (29 June 1976), the Security Council considered a draft resolution affirming, *inter alia*, the inalienable right of the Palestinian people to self-determination, which

obtained 10 votes in favour, 1 against (United States of America) with 4 abstentions and could not be adopted owing to the negative vote cast by a permanent member of the Council. General Assembly resolution 31/20 of 24 November 1976 urged the Security Council to consider the recommendations contained in the Committee's report once again. The Committee met again in 1977 and submitted a report to the General Assembly at its thirty-second session.<sup>84</sup>

192. Under the United Nations Fund for Namibia, a number of technical and vocational training projects, as well as projects in the field of agriculture and health, are being implemented in Botswana, Kenya, Zambia and other African countries where a significant number of Namibian refugees are living.

193. The agencies and organizations concerned are assisting peoples in liberated areas in co-operation with OAU, particularly in the broad field of education and training. The UNDP Governing Council decided at its seventeenth session, in January 1974, to waive counterpart obligations normally required of Governments in respect of projects beneficial to the peoples concerned. WHO has responded to requests by the Government of the United Republic of Tanzania for international assistance in meeting the health needs of the populations helped by the national liberation movements recognized by OAU. The ILO has designed a project for training assistance for the people of Mozambique in consultation with FRELIMO. FAO, with the support of UNDP, is assisting in establishing a programme of agricultural training at the Mozambique Institute in the United Republic of Tanzania, which is operated by FRELIMO. FAO and WFP are continuing to provide food assistance to refugees, on the basis of requests from Governments, through emergency food aid and settlement projects.

194. Many agencies, pursuant to decisions of their governing bodies, have taken measures to withhold assistance from and to discontinue support to the Governments of Portugal and South Africa and to Southern Rhodesia and have continued to withhold financial, economic, technical and other assistance from them. At its Plenipotentiary Conference in September-October 1973, ITU denied Portugal the right to represent the African Territories then under its domination and resolved that the Government of Portugal should be excluded from the Plenipotentiary Conference and from any other conferences or meetings of the Union. It further confirmed that the Republic of South Africa should be excluded from the Plenipotentiary Conference and from any other conferences or meetings of the Union. The IMCO Assembly, at its eighth session, held in November 1973, decided to reject the credentials of the representative of Portugal as an observer in the deliberations of the IMCO Assembly and to exclude Portugal and South Africa from all conferences and meetings of IMCO. The World Bank Group continues to withhold assistance from Portugal, South Africa and Southern Rhodesia.

195. With regard to efforts to combat *apartheid*, the organizations of the United Nations system are taking measures to give wider and more effective publicity to the evils of *apartheid*, in accordance with General Assembly resolution 3151 C (XXVIII) of 14

December 1973, and they will continue to assist the Special Committee against *Apartheid* in its work. The agencies are intensifying concerted efforts against *apartheid* and formulating programmes of action as requested under General Assembly resolution 3151 E (XXVIII).

196. The organizations of the United Nations system are pledged to do their utmost to participate in the observance of the Decade for Action to Combat Racism and Racial Discrimination by intensifying and expanding their efforts towards the eradication of racism and racial discrimination.

197. The organizations of the United Nations system are providing assistance to Zambia in response to Security Council resolution 329 (1973), under which the Secretary-General was requested, in collaboration with appropriate organizations of the United Nations system, to organize with immediate effect all forms of financial, technical and material assistance to Zambia to enable it to carry out its policy of economic independence from the racist régime of Southern Rhodesia.

198. In the light of the relevant Economic and Social Council and General Assembly resolutions, UNHCR has close contacts with a number of liberation movements in Africa, in consultation with OAU, thus exemplifying fully the humanitarian character of the High Commissioner's work. It has been proposed that aid to refugees through institutions linked with the liberation movements should become part of the UNHCR regular assistance programme. UNHCR further intends to increase the scope of such assistance, which will include appropriate legal protection measures for refugees where necessary.<sup>85</sup>

199. UNHCR also assists in rural settlement and education and training with a view to enabling refugees to participate fully in the economic and social development of their country of origin upon their return. The total number of refugees concerned rose to over 580,000 by the end of 1973. The great majority were located in Zaire, and most of the others were in Senegal, the United Republic of Tanzania, and Zambia. UNHCR projects amounting to some \$1.6 million were drawn up for their benefit in 1973; a considerable proportion of UNHCR funds, including trust funds, was used to finance primary and post-primary education for these refugees.

200. In its resolution 3271 (XXIX) of 10 December 1974, the General Assembly noted with satisfaction the positive trends in Africa that opened the possibility for the voluntary repatriation of large numbers of refugees from Territories emerging from colonial rule;<sup>86</sup> it requested the High Commissioner to take appropriate measures, in agreement with the Governments concerned, to facilitate the voluntary repatriation of these refugees and, in co-ordination with other competent organs of the United Nations, their rehabilitation in their countries of origin.<sup>87</sup>

201. In its resolution 3300 (XXIX), adopted on 13 December 1974, the General Assembly reaffirmed that the recognition of the legitimacy of the struggle of colonial countries and peoples to achieve freedom and independence entailed, as a corollary, the extension by the United Nations system of organizations of all the necessary moral and material assistance to the peoples of the colonial Territories, including in particular the

populations of the liberated areas of those Territories and their national liberation movements; reiterated its urgent request that the specialized agencies and other organizations within the United Nations system, including in particular UNDP and the World Bank, should take measures, within their respective spheres of competence, to increase the scope of their assistance to refugees from colonial Territories, including assistance to the Governments concerned in the preparation and execution of projects beneficial to those refugees, and, in that connexion, to introduce the greatest possible measure of flexibility in their relevant procedures; urged once again the specialized agencies and other organizations within the United Nations system, in accordance with the relevant resolutions of the General Assembly and the Security Council, to take all necessary measures to withhold any financial, economic, technical or other assistance from the Government of South Africa and the illegal régime of Southern Rhodesia, to discontinue all support to them until they restored to the peoples of Namibia and Zimbabwe their inalienable right to self-determination and independence, and to refrain from taking any action which might imply recognition of the legitimacy of the domination of the Territories by those régimes; requested the specialized agencies and other organizations within the United Nations system to make appropriate procedural arrangements and, if necessary, amend their relevant instruments, with a view to enabling representatives of the national liberation movements of the colonial Territories recognized by OAU to participate fully as observers in all proceedings relating to their countries, particularly so as to ensure that assistance projects of the agencies and organizations were carried out to the benefit of the national liberation movements and peoples of the liberated areas.

202. United Nations specialized agencies, particularly in recent years, have adopted a series of resolutions on problems arising out of the right of peoples to self-determination. Reference is made in the report of the Secretary-General to resolutions adopted on this subject by the ILO,<sup>88</sup> UNESCO<sup>89</sup> and FAO.<sup>90</sup>

203. The Special Rapporteur will refer to those resolutions of the specialized agencies which feature in the replies so far received to the note sent to them at his request, and to other resolutions which he has felt it essential to mention because of their special relevance.

204. The action of a general nature undertaken by these agencies for recognition of the economic, social and cultural aspects of the right to self-determination has been reviewed earlier.

205. In its report of 16 March 1975, the ILO mentions the resolutions of the International Labour Conference of 22 June 1971<sup>91</sup> and 27 June 1972,<sup>92</sup> together with subsequent decisions by the Governing Body concerning the right of peoples to self-determination.

206. The sixtieth International Labour Conference decided, on 12 June 1975, to admit as observers representatives of national liberation movements recognized by OAU and the League of Arab States which had been invited by the Conference or the Governing Body to be represented at the Conference. It amended its regulations accordingly. Representatives of liber-

ation movements so invited may, with the permission of the President, address the Conference during the discussion of the Director-General's report.<sup>93</sup>

207. The Fourth African Regional Conference of the ILO, held in 1973, adopted a resolution concerning Namibia in which it associated itself with the decisions and appeals by universal and regional organizations calling for the immediate withdrawal of South Africa from Namibia, denounced the inhuman practice of contract labour and all the injustices that it entailed, and pledged full support to the Namibian workers in their struggle for trade union and human rights.<sup>94</sup> In another resolution, the Conference denounced the practices that victimized migrant workers from African countries in regions still under colonial or foreign domination; requested African States and all other States members of the ILO to take all steps necessary to discourage migration to the Republic of South Africa, Rhodesia and all countries under colonial domination; and requested the Governing Body of the International Labour Office to consider these questions with a view to their being discussed at the International Labour Conference in connexion with the question of migrant workers.<sup>95</sup>

208. FAO, in its reply of 3 February 1975, transmitted the text of resolution 13/73, adopted by the FAO Conference on 26 November 1973, in which the Conference welcomed the participation of African liberation movements in FAO meetings, seminars and training centres and other activities undertaken or sponsored by FAO/WFP; affirmed that participation by African liberation movements in FAO/WFP meetings and other activities undertaken by FAO/WFP would ultimately contribute to the economic and social development of the territories liberated by or under the control of the liberation movements in Africa; decided to request the Director-General of FAO to make the necessary arrangements through OAU to facilitate the participation of representatives of the African liberation movements, with immediate effect;<sup>96</sup> and authorized the Director-General to invite, through OAU, representatives of African liberation movements to attend regional and technical conferences and consultations convened in Africa under article VI (5) of the Constitution, including the African Regional Conference, and to participate in the deliberations on items dealt with at such conferences and consultations that might be of direct concern to the liberation movements.<sup>97</sup> At the 1975 Conference, the Palestine Liberation Organization was admitted as an observer.

209. FAO also attached the records of the proceedings of the FAO Council at its sixty-fourth session,<sup>98</sup> when the decisions on the participation of African liberation movements in various FAO activities and meetings were taken, together with the report of the Committee on Constitutional and Legal Matters on the subject<sup>99</sup> and the report on decolonization and assistance to African liberation movements, which was prepared in order to assess the implementation of Conference resolution 13/73.<sup>100</sup>

210. The Seventh World Meteorological Congress decided on 30 April 1975 to suspend the Government of South Africa from the exercise of its rights and privileges as a member of WMO until it renounced its policy of racial discrimination and complied with the United

Nations resolutions on Namibia. The Congress further decided that the United Nations Council for Namibia should be invited to represent Namibia at WMO congresses and meetings. The national liberation movements recognized by OAU and the League of Arab States would also be invited to attend meetings as observers.

211. Although WHO, in its reply of 22 April 1975, did not refer to the questions dealt with in the above paragraphs,<sup>101</sup> the World Health Assembly, at its twenty-seventh session in May 1974, requested the Director-General "to take the necessary steps to invite the representatives of the national liberation movements recognized by the Organization of African Unity or by the League of Arab States to attend the meetings of WHO in an observer capacity".

212. UNESCO<sup>102</sup> reported on various aspects of its activities in combating racialism and colonialism, stating that "the right to self-determination", widely recognized by the General Conference and the Executive Board, was reflected in a number of resolutions and decisions of those organs and more generally in the political action of the Organization in the first place and in many of its activities in the second.

213. At the seventeenth General Conference, in 1972, resolution 10.I stressed the link between international peace and security and the need to eliminate colonialism and racialism. The Executive Board therefore invited the Director-General, in consultation with OAU, to associate the African liberation movements with the work of UNESCO.

214. At the eighteenth General Conference, in 1974, the ideas expressed in resolution 10.I were restated in resolution 11.I and stress was laid on the need to assist peoples under colonial or alien domination to achieve national independence.

215. The representatives of various African national liberation movements have been invited to participate in a number of UNESCO's activities, and intensive educational and cultural activities have been planned for the peoples under colonial or alien domination.

216. In resolution 8 of 7 November 1970,<sup>103</sup> the General Conference of UNESCO noted, *inter alia*, that military occupation by foreign forces constituted a constant danger to peace and human rights; noted with concern the continuing pernicious influence of colonialism, neo-colonialism, racialism and fascism and other anti-humanistic concepts on the intellectual life of the peoples of a number of countries; accorded paramount importance to the struggle against the infiltration of neo-colonialism and racialism into education and culture, and called on member States actively to oppose colonialism, neo-colonialism, racialism and fascism and all forms of oppression and tyranny; reaffirmed its decision not to accord any help to the Governments of Portugal and the Republic of South Africa or to the illegal régime in Southern Rhodesia in the realms of education, science and culture and, in particular, not to invite them to participate in conferences and other UNESCO activities until such time as the authorities of those countries desisted from their policy of colonial oppression and racial discrimination; drew the attention of the Executive Board and of the Director-General to the need to strengthen UNESCO's action within the limits of its competence,

as regards the assistance to be given to (a) refugees from colonial territories, and (b) other peoples striving to liberate themselves from colonial domination and all forms of *apartheid*; invited the Director-General to send a mission to OAU and, after examination of its report by the Executive Board, evolve concrete programmes for assistance to (a) refugees from colonial territories and (b) other peoples striving to liberate themselves from colonial domination and all forms of *apartheid*; requested the Director-General to examine the situation in the Portuguese African Territories and in Namibia with regard to education, information, the social sciences, the human sciences and culture; requested the Director-General to intensify his efforts to counteract the propaganda of the Government of the Republic of South Africa by furnishing OAU and those countries desirous of receiving it with information obtained under the projects outlined above, in a form that could be adapted for use by the communication media of such countries in their efforts to counteract that propaganda; requested the Director-General to undertake investigations of all international non-governmental organizations enjoying relations with UNESCO which had branches, sections, affiliates or constituent parts in the Republic of South Africa or Southern Rhodesia or Portuguese-dominated African Territories, with respect to the practice of racial discrimination or racial segregation in their policies, activities or membership or their co-operation in any way with the *apartheid* policy of the Government of the Republic of South Africa, and to report thereon to the Executive Board; and called upon the Executive Board to take the necessary measures to break off, as from 31 December 1971, all relations with those international non-governmental organizations in respect of which it had not been established, to the satisfaction of the Board, that their branches, sections, affiliates or constituent parts in the Republic of South Africa, Southern Rhodesia or Portuguese-dominated African Territories neither practised racial discrimination or segregation in their policies, activities or membership, nor co-operated in any way with the Government of the Republic of South Africa in the latter's *apartheid* policy.

217. In resolution 17.2 of 25 October 1974, the General Conference of UNESCO decided that observers from African liberation movements recognized by OAU might make oral or written statements in plenary meetings and in meetings of committees, commissions and subsidiary bodies, with the consent of the presiding officer. In resolution 18.1, adopted on the same date, the General Conference decided to amend its regulations to include a provision that the General Conference, the Executive Board or the Director-General, according to the category of meeting, should decide which African liberation movements recognized by OAU were to be invited to send observers to UNESCO meetings.

218. In resolution 17.2 of 25 October 1974, the General Conference of UNESCO decided that, before each session of the General Conference, the Executive Board should include the Palestine Liberation Organization, recognized by the League of Arab States, in the appropriate list for invitations to send observers to the session. The Director-General would notify the Pales-

tine Liberation Organization of the dates of the session and invite it to send observers. The General Conference also decided that observers from the Palestine Liberation Organization, recognized by the League of Arab States, might make oral or written statements in plenary meetings and in meetings of committees, commissions and subsidiary bodies with the consent of the presiding officer. In resolution 18.2 of 25 October 1974, the General Conference decided that the General Conference itself, the Executive Board or the Director-General, according to the category of meeting, should invite the Palestine Liberation Organization, recognized by the League of Arab States, to send observers to the meetings referred to in the regulations for the general classification of the various categories of meetings convened by UNESCO.

219. In its resolution 11, adopted, on 22 November 1974,<sup>104</sup> the General Conference of UNESCO, taking note of the Director-General's report on UNESCO's contribution to peace and its tasks with respect to the elimination of colonialism and racialism and the implementation of the resolutions relating to the African peoples fighting for their liberation,<sup>105</sup> declared that UNESCO should take a more active part in the struggle against all forms and manifestations of facism, neo-colonialism and all other forms of oppression and tyranny, racialism and *apartheid* caused by imperialism, and should intensify its action to preserve peace, achieve *détente* at a still deeper level and strengthen international understanding so as to make this process irreversible. It declared that UNESCO should intensify its action in this field and that genuine international co-operation required the equal rights and self-determination of peoples. It also reaffirmed its earlier decisions not to extend any UNESCO assistance to the racist Government of the Republic of South Africa or to the illegal and racist régime of Southern Rhodesia, and not to invite them to participate in any UNESCO activity until the authorities of those countries had put an end to their policy of racial discrimination; invited the States members of UNESCO that were also members of other organizations and agencies, particularly those of the United Nations system, to have the Republic of South Africa and Southern Rhodesia excluded from any meetings or activities of the Organization in which those two countries might presume to participate; requested the Director-General to keep the Executive Board informed of the measures taken by States members of UNESCO in response to the invitation addressed to them and to submit to the Executive Board "any problem resulting from implementation of the present decision"; declared that UNESCO must intensify its action on behalf of the peoples struggling against colonialism, racialism, discrimination and foreign occupation; invited the Director-General to make provision in the next draft programme and budget for an increase in the resources made available to assist the Palestine liberation movement, the liberation movements recognized by OAU, and the peoples of liberated areas; expressed the firm hope that Palestine would join the community of nations within the international organizations, including UNESCO; and declared that the violation of human rights affecting the peoples of occupied territories must be denounced and brought to the attention of world public opinion.

220. The ITU Plenipotentiary Conference decided in October 1973 that national liberation organizations recognized by the United Nations might attend meetings of ITU as observers.

221. The IMCO Assembly decided at its eighth session, held in November 1973, to amend its rules of procedure to include the national liberation movements recognized by OAU in the categories of participants who might be invited to attend various IMCO meetings as observers.

222. The ICAO Assembly, at its nineteenth (extraordinary) session (27 February-2 March 1973), adopted a resolution which made a highly important contribution to efforts to ensure that Portugal implemented the resolutions of the United Nations General Assembly relating to the self-determination of peoples under Portuguese domination.<sup>106</sup> Although the situation which led to the adoption of this resolution has now been settled, it remains an interesting precedent for similar formulations which might be used in cases where the right of peoples under colonial and alien domination to self-determination continues to be seriously, repeatedly and flagrantly denied and flouted.

223. The General Conference of IAEA, meeting at Rio de Janeiro in September 1976, invited the Palestine Liberation Organization to attend the General Conference's meetings as an observer.

224. The action taken by the specialized agencies and the international institutions associated with the United Nations in some of the cases referred to in the foregoing paragraphs, and in others, has been outlined by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in its report to the General Assembly.<sup>107</sup>

225. The General Assembly stressed the need to co-ordinate the activities of the specialized agencies in regard to assistance and support for the peoples struggling for self-determination against colonial and alien domination. Resolution 31/30 of 29 November 1976 is particularly important, systematic and comprehensive in this respect.<sup>108</sup>

226. The United Nations has called special conferences, like the International Conference in Support of the Peoples of Zimbabwe and Namibia (Maputo, May 1977) and the World Conference for Action against *Apartheid* (Lagos, August 1977), for dealing specifically and particularly with questions directly connected with the right of these peoples to self-determination and its recognition and practical application in the light of the present situation in southern Africa.

227. The question of the participation of the national liberation movements recognized by OAU or by the League of Arab States, or by both, the significance of which has been mentioned earlier in this study in connexion with their activities to secure the recognition and implementation of the right of peoples to self-determination, has been raised also in recent conferences convened by the United Nations and in other international gatherings.

228. The United Nations Conference on the Representation of States in Their Relations with International Organizations<sup>109</sup> adopted a resolution on observer status for the national liberation movements

recognized by OAU or the League of Arab States or both; this is included in the Final Act. In that resolution, the Conference, after recalling General Assembly resolution 3247 (XXIX) of 29 November 1974, decided to invite the national liberation movements recognized by OAU or the League of Arab States, or both, in their respective regions to participate in the Conference as observers. Being conscious of the value of such participation and desirous of ensuring it and of regulating the status of those movements and the facilities, privileges and immunities necessary for the performance of their tasks, the Conference requested the General Assembly to examine the question at its thirtieth session and recommended the States concerned to accord the delegations of those movements the facilities, privileges and immunities in question, in the light of the provisions of the Convention adopted by the Conference.

229. At its 40th plenary meeting, on 12 July 1974, the Third United Nations Conference on the Law of the Sea, meeting at Caracas, decided that national liberation movements recognized by OAU or by the League of Arab States might designate representatives to participate as observers, without the right to vote, in the deliberations of the Conference, the main Committees and, as appropriate, the subsidiary organs.<sup>110</sup>

230. The World Population Conference, held at Bucharest from 19 to 30 August 1974, adopted resolution XVIII, "Decolonization", in which it requested the Government of Portugal to accelerate the granting of full independence to all the Territories still under its colonial domination at that time and requested the Secretary-General of the United Nations to undertake all necessary measures in order to ensure that proper demographic and population data on those Territories were available, and to prepare a comprehensive emergency plan of action to assist the peoples of the Territories concerned in their economic and social development upon their accession to independence.<sup>111</sup> In resolution XX, the Conference decided to request the General Assembly to defray all travel costs and related expenses of representatives of the national liberation movements which participated in the World Population Conference.<sup>112</sup>

231. The United Nations Water Conference, held at Mar del Plata (Argentina) in 1977, adopted a resolution, which is also studied in another part of this study (see para. 146 above), of great relevance to the recognition and effective exercise of the right of peoples to self-determination in relation to their right to control over their natural resources in general and their water resources in particular.

232. Habitat: United Nations Conference on Human Settlements, held at Vancouver in 1976, decided to authorize the participation of representatives of the Palestine Liberation Organization and the national liberation movements recognized by OAU (African National Congress, African National Council, Pan Africanist Congress of Azania). The Vancouver Declaration of Principles states, *inter alia*, that it is the duty of all people to join the struggle against any form of colonialism (sect. II, para. 4) and reiterates and reaffirms the essential components of the right of peoples to economic and cultural self-determination (sect. II, paras. 7-9).

233. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened by the Government of Switzerland, adopted on 28 February 1974, by acclamation, a draft resolution inviting Guinea-Bissau to participate as a State, even though it had not yet become a Member of the United Nations and had not completed the process which culminated in the establishment of that independent State. On 1 March 1974, it adopted, by consensus, a resolution inviting national liberation movements recognized by the regional intergovernmental organizations concerned to participate without voting rights. Ten delegations participated in the Conference as representatives of national liberation movements recognized by the regional intergovernmental organizations concerned: the Mozambique Liberation Front (FRELIMO), the People's Movement for the Liberation of Angola (MPLA), the Angola National Liberation Front (FNLA), the African National Congress (ANC), the African National Council of Zimbabwe (ANCZ), the Pan Africanist Congress (PAC), the Zimbabwe African National Union (ZANU), the Zimbabwe African People's Union (ZAPU), the South-West Africa People's Organization (SWAPO), the Seychelles People's United Party (SPUP) and the Palestine Liberation Organization (PLO).<sup>113</sup> The Final Act (July 1977) refers to their participation (para. 3) and made provision for signature of the Final Act by ANC, PLO, PAC and SWAPO, on the understanding that "signature by these movements is without prejudice to the positions of participating States on the question of a precedent".

234. In 1977 the Conference approved the inclusion in Protocol I to the Geneva Conventions of 1949 of a provision, considered in another part of this study (see chap. IV, paras. 268-274), containing a definition of "combatant", which is of particular significance in relation to implementation of the right of peoples to self-determination (art. 1).

235. Special mention should be made of the activities of regional intergovernmental organizations in regard to the right of peoples under colonial and alien domination to self-determination. Firstly, the existence of regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security is in conformity with the Charter of the United Nations (Art. 52); colonialism involves a fundamental violation of the right of peoples to self-determination and may endanger that peace and security. In addition, regional action to protect, uphold and promote human rights, which does not necessarily form part of regional arrangements, but may do so, has an important role to play in promoting the exercise of the right of peoples to self-determination, a right which is a prerequisite for the existence of all other rights and freedoms.<sup>114</sup> Since the scope of the present study is limited, the Special Rapporteur will consider this question only in so far as it concerns the contribution which regional organizations are making to the more effective implementation of United Nations resolutions on the right of peoples under colonial and alien domination to self-determination.

236. OAS replied to the questionnaire on 3 May 1975. Concerning its views on the implementation of

United Nations resolutions on the right of peoples to self-determination, it stated:

The General Secretariat cannot give such views either on behalf of the Organization or on its own behalf on the meaning of the right to self-determination from the point of view of the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination, or on the meaning of the term 'peoples under colonial and alien domination' from the point of view of the implementation of the aforesaid resolutions.

The OAS paper includes a list of OAS resolutions on colonialism.<sup>115</sup>

237. The report of the Secretary-General<sup>116</sup> contains a list of declarations and resolutions on the rights of peoples under colonial and racist domination adopted at the twenty-first session of the Council of Ministers, and endorsed at the tenth session of the Assembly of Heads of State and Government of OAU. These were transmitted by the Administrative Secretary-General of OAU. OAU has not replied to the questionnaire forwarded to it in connexion with the preparation of this study, but mention should be made of its activities to implement the right of self-determination, since they have been referred to repeatedly by the General Assembly, both in relation to co-operation between the United Nations and OAU in this sphere and, more particularly, with reference to the work of the OAU Fact-Finding Commission of Inquiry and Conciliation in connexion with the conflict in Angola.<sup>117</sup>

238. The report of the Secretary-General<sup>118</sup> mentions the fact that the Secretary-General of the League of Arab States transmitted copies of several resolutions of the League's Council on the right of peoples under colonial and alien domination to self-determination. The following is stated in the note forwarded by the Secretary-General of the League of Arab States on 23 September 1975 in reply to the questionnaire sent to the League in connexion with the preparation of the present study.

In this respect I wish to emphasize that the League of Arab States has always recognized and supported the right to self-determination and independence of all peoples under colonial and foreign domination and alien subjugation. The League reaffirms particularly the rights of the peoples of Africa and the Palestinian people to self-determination, independence and sovereignty in their own countries. The League's Council has adopted several resolutions which appeal to all States to sever all relations with the Government of South Africa, and to extend moral and material support to liberation movements and the national struggle against racial discrimination and minority domination in Africa. These resolutions were adopted with complete awareness of the affinities between the struggle of the peoples of Africa, in its motives and objectives, and that of the Arab nation against Israeli occupation and Zionist racial and religious discrimination in Palestine.

239. The interest taken by the Islamic Conference of Foreign Ministers in the question of the right of peoples to self-determination was referred to in the Commission on Human Rights in 1977.<sup>119</sup>

240. The Final Act of the Conference on Security and Co-operation in Europe (opened at Helsinki on 3 July 1973; continued at Geneva from 18 September 1973 to 21 July 1975 and closed at Helsinki on 1 August 1975) contains a Declaration on Principles guiding Relations between Participating States (Austria; Belgium; Bulgaria; Canada; Cyprus; Czechoslovakia; Denmark; Finland; France; German Democratic

Republic; Germany, Federal Republic of; Greece; Holy See; Hungary; Iceland; Ireland; Italy; Liechtenstein; Luxembourg; Malta; Monaco; Netherlands; Norway; Poland; Portugal; Romania; San Marino; Spain; Sweden; Switzerland; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United States of America; Yugoslavia). This text, in which the participating States declare their determination to put these principles into practice in their relations with the other participating States, irrespective of their political, economic or social systems, as well as of their size, geographical location or level of economic development, contains a section VIII entitled "Equal rights and self-determination of peoples" which reads:

The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.

This statement, like all the principles in the Final Act of the Helsinki Conference, is based directly on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). But the statement of the principle of equal rights and self-determination of peoples is much more condensed and does not mention some of the points referred to in the United Nations Declaration.<sup>120</sup>

241. In resolution 3237 (XXIX), of 22 November 1974, the General Assembly invited the Palestine Liberation Organization to participate in the capacity of observer in the sessions and work of the General Assembly and in the sessions and work of all international conferences convened under the auspices of the General Assembly. The Assembly also considered that the Palestine Liberation Organization was entitled to participate as an observer in the sessions and work of all international conferences convened under the auspices of other United Nations organs.

242. Other types of international action—for instance, the activities of particular groups of nations, such as the group known as the non-aligned countries—can undoubtedly be an extremely important instrument in promoting the more effective implementation of United Nations resolutions on the right of peoples under colonial and alien domination to self-determination. In this connexion, special mention may be made of certain resolutions adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries (Algiers, 5-9 September 1973), the Conference of Ministers for Foreign Affairs of Non-

Aligned Countries (Lima, 25-30 August 1975) and the Fifth Conference of Heads of State or Government of Non-Aligned Countries (Colombo, 16-19 August 1976).

#### D. Conclusions regarding the work done by the United Nations in this field

243. This action taken by the entire United Nations system to secure recognition of the right of peoples under colonial and alien domination to self-determination has without doubt led to highly positive results as regards the final objective sought.

244. What has been achieved in this respect affords one of the most outstanding examples of the effectiveness and importance of the work done by the United Nations. The end of the great colonial empires and traditional colonialism and the creation of an international society based on effective recognition of the right of peoples to self-determination, with the result that 151 sovereign independent States are now Members of the United Nations, have to a large extent been achieved through United Nations efforts. These achievements and the problems raised by the right of peoples to self-determination, as well as future prospects, are summed up in paragraph 6 of the Declaration on the Occasion of the Twenty-Fifth Anniversary of the United Nations, adopted by the General Assembly in 1970 (resolution 2627 (XXV)). The terms of this paragraph deserve to be reproduced:

We acclaim the role of the United Nations in the past twenty-five years in the process of the liberation of peoples of colonial, Trust and other Non-Self-Governing Territories. As a result of this welcome development, the number of sovereign States in the Organization has been greatly increased and colonial empires have virtually disappeared. Despite these achievements, many Territories and peoples continue to be denied their right to self-determination and independence, particularly in Namibia, Southern Rhodesia, Angola, Mozambique and Guinea (Bissau), in deliberate and deplorable defiance of the United Nations and world opinion by certain recalcitrant States and by the illegal régime of Southern Rhodesia. We reaffirm the inalienable right of all colonial peoples to self-determination, freedom and independence and condemn all actions which deprive any people of these rights. In recognizing the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal, we call upon all Governments to comply in this respect with the provisions of the Charter, taking into account the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the United Nations in 1960. We re-emphasize that these countries and peoples are entitled, in their just struggle, to seek and to receive all necessary moral and material help in accordance with the purposes and principles of the Charter.

245. However, despite the exceptional importance of what has been done, the problem has not yet been solved entirely, even from the political standpoint alone, nor has the right to self-determination become a reality everywhere. Many colonial situations still exist and there are still many United Nations resolutions on specific cases which have not yet been fully

implemented. Hence the need to persevere, to maintain and, if possible, speed up the process of decolonization, and to consider, systematically and globally, the work done and the procedures employed, in order to determine what new measures are required and what approach should be taken with regard to the implementation of the resolutions already adopted.<sup>121</sup>

246. That in fact is the ultimate purpose of this study; after a study of all the resolutions adopted on the subject by the United Nations, and a review of the extent to which they have been implemented, it must conclude, as indicated in resolution 5 (XXX) of the Commission on Human Rights, by making "recommendations... with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination".

247. There can be no overlooking the difficulties which even today are seriously hampering the full achievement of the objectives of the Charter and General Assembly resolution 1514 (XV) with regard to the recognition of the right of peoples under colonial and alien domination to self-determination.

248. In addition to the negative influence exerted by undeniable political and military interests,<sup>122</sup> there are the effects of other interests, particularly economic ones.<sup>123</sup>

249. United Nations action to eliminate colonialism should take realistic account of the existence and impact of these adverse interests and should adopt a global, systematic and unified approach to the struggle for the recognition of the right to self-determination in every field, in all the competent organs and all the organizations of the United Nations system.

250. But while there is reason to think that this systematic and constant effort by the international community will shortly put an end to traditional colonialism, although there still remain some particularly serious problems inherent in that form of colonialism to be solved, inasmuch as the violation of the right to self-determination of peoples occurs openly, repeatedly, flagrantly and deliberately, it should not be forgotten that other problems continue to exist in this connexion and that new forms of violation of this right of peoples have appeared. Indeed, economic neo-imperialism and the new forms of colonialism, particularly serious for developing countries and especially for small States which have achieved independence in the last stage of the process of decolonization, constitute manifestations of the violation of the right to self-determination of peoples which may have the effect of cancelling out, to a large extent, the results achieved by the process of political decolonization. This is why it is essential for the United Nations to pay particular attention in the future to this question, which is directly related to the economic, social and cultural aspects of the right to self-determination.

## FOOT-NOTES TO CHAPTER II

<sup>1</sup> E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1.

<sup>2</sup> E/CN.4/1081, chap. IV.

<sup>3</sup> E/CN.4/1081, chaps. II and III.

<sup>4</sup> In its reply of 13 October 1975, the Government of New Zealand made particular reference to this necessarily multi-faceted nature of the right to self-determination (see chap. I, foot-note 2).

<sup>5</sup> Resolution 1541 (XV) of 15 December 1960, principles VI, VII and VIII; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Chapter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970).

<sup>6</sup> Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-sixth session (E/CN.4/1128), para. 28 (a).

<sup>7</sup> Self-determination and independence are not synonymous, since the exercise of self-determination may lead to a political status other than independence; the connexion between them is obvious, however, and independence is normally the desirable ultimate objective of the right to self-determination. On this question, the Government of Mexico made some interesting comments in its reply of 25 February 1975.

<sup>8</sup> E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1.

<sup>9</sup> E/CN.4/1081/Add.2.

<sup>10</sup> E/CN.4/1081, paras. 131-134 and 150-152; E/CN.4/1081/Add.1, para. 17; E/CN.4/1081/Add.2, paras. 2 and 41-44.

<sup>11</sup> See D. Rosenberg, "Le principe de la souveraineté permanente sur les ressources naturelles: un droit à l'émancipation et une arme de libération pour les peuples du tiers monde", *Annuaire du Tiers Monde*, 2, Paris, Berger-Levrault, 1976; UNESCO, "Le droit des peuples à l'autodétermination et la souveraineté permanente sur les ressources naturelles dans le contexte de l'établissement d'un nouvel ordre économique international (SS-78/Conf.630/5)", by F. Rigaux.

<sup>12</sup> The resolutions on permanent sovereignty over natural resources were listed earlier. Account should also be taken of the provisions on this subject included in the International Development Strategy for the Second United Nations Development Decade (resolution 2626 (XXV)), para. 74; in resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 and 3362 (S-VII) of 16 September 1975 on the new international economic order; in the Charter of Economic Rights and Duties of States, arts. 1, 2 and 16 (2) (resolution 3281 (XXIX) of 12 December 1974); and in Economic and Social Council resolution 1956 (LIX). See also article 136 of the informal negotiating text prepared by the Chairman of Committee II of the Third United Nations Conference on the Law of the Sea, which states:

"1. The rights recognized or established by the present Convention to the resources of a territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations or a territory under foreign occupation or colonial domination or a United Nations Trust Territory or a territory administered by the United Nations shall be vested in the inhabitants of that territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements.

"2. Where a dispute over the sovereignty of a territory under foreign occupation or colonial domination exists, the rights referred to in paragraph 1 shall not be exercised until such dispute is settled in accordance with the purposes and principles of the Charter of the United Nations." (See *Official Records of the Third Conference on the Law of the Sea, Third Session*, vol. IV (United Nations publication, Sales No. E.75.V.10), pp. 138-140, document A/CONF.62/WP.8/Part II).

<sup>13</sup> The Special Rapporteur prefers the expression "transnational enterprises or corporations"; in his opinion, the expression "multinational enterprises" should be used only to describe public enterprises whose funds are provided by more than one State. See *Multinational Corporations in World*

*Development* (United Nations publication, Sales No. E.73.II.A.11) and *The Impact of Multinational Corporations on Development and on International Relations* (United Nations publication, Sales No. E.74.II.A.5). See also Economic and Social Council resolution 1913 (LVII) of 6 December 1974 concerning the Commission on Transnational Corporations and its report on its first session (*Official Records of the Economic and Social Council, Fifty-ninth Session, Supplement No. 12* (E/5655)). At its second session, held at Lima in March 1976, the Commission agreed that the highest priority should be given to work which would lead to the formulation of a code of conduct for transnational corporations (*ibid.*, *Sixty-first Session, Supplement No. 5* (E/5782), para. 42). This question is also being studied by the United Nations Commission on International Trade Law (see *UNCITRAL Yearbook*, vol. VI: 1975 (United Nations publication, Sales No. E.76.V.5), part two, VI, document A/CN.9/104).

<sup>14</sup> These resolutions are listed in foot-note 11 to chapter I of this study. Following resolution 3516 (XXX), the General Assembly adopted on 21 December 1976 resolution 31/186, entitled "Permanent sovereignty over national resources in the occupied Arab territories", which refers to this question and reaffirms permanent sovereignty and the rights it implies in the particular case of these territories. The United Nations Water Conference, held at Mar del Plata, Argentina, in March 1977, adopted a resolution entitled "Water policies in the occupied territories", which:

"1. Affirms the inalienable right of the people of the countries under colonial and alien domination in their struggle to regain effective control over their natural resources, including water resources;

"2. Recognizes that the development of water resources in territories subjected to colonialism, alien domination, racial discrimination and *apartheid* should be directed for the beneficial use of the indigenous peoples who are the legitimate beneficiaries of their natural resources, including their water resources;

"3. Denounces any policies or actions by the colonizing and/or dominating Powers contrary to the provision of paragraph 2 of the present resolution, and particularly in Palestine, Zimbabwe, Namibia and Azania." (See *Report of the United Nations Water Conference* (United Nations publication, Sales No. E.77.II.A.12), p. 81.)

<sup>15</sup> See "Special economic problems and development needs of geographically more disadvantaged developing island countries: Note by the Secretary-General" (E/5647); see also Economic and Social Council decisions 5 (LVI) and 33 (LVII) and resolution 1956 (LIX).

<sup>16</sup> General principles 1 and 14, adopted by the United Nations Conference on Trade and Development at its first session (1964) (See *Proceedings on the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), second part, pp. 10-11); Conference resolution 46 (III) and Trade and Development Board resolution 88 (XII).

<sup>17</sup> Decree on the natural resources of Namibia, adopted by the United Nations Council for Namibia at its 209th meeting (for the text, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 24A* (A/9624/Add.1), sect. VI).

<sup>18</sup> Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, 1975 (for the text, see *Report of the World Conference of the International Women's Year* (United Nations publication, Sales No. E.76.IV.1), part one, para. 19).

<sup>19</sup> In particular the Vancouver Declaration on Human Settlements, 1976, sets forth in detail the economic components of the right to self-determination. Paragraphs 7 and 8 of section II (General principles) state:

"7. Every State has the sovereign and inalienable right to choose its economic system, as well as its political, social and cultural system, in accordance with the will of its people, without interference, coercion or external threat of any kind.

"8. Every State has the right to exercise full and permanent sovereignty over its wealth, natural resources and

economic activities, adopting the necessary measures for the planning and management of its resources, providing for the protection, preservation and enhancement of the environment." (See *Report of Habitat: United Nations conference on Human Settlements* (United Nations publication, Sales No. E.76.IV.7), chap. I.)

<sup>20</sup> At its fifth session, the Committee on Natural Resources recommended to the Economic and Social Council that it should adopt draft resolution VI, which requested the Secretary-General:

"(a) To prepare progress reports for the Committee on Natural Resources at its regular sessions on the work being done in the field of the exercise of the inalienable rights of peoples and permanent sovereignty over natural resources in the territories under foreign domination, colonial administration, alien occupation, *apartheid* or racial discrimination, and

(b) To prepare reports providing detailed information on pertinent aspects of and relevant developments concerning exercise by developing countries and peoples of their inalienable rights and permanent sovereignty over their natural resources and to submit these reports to the Committee on Natural Resources at its regular sessions". (See *Official Records of the Economic and Social Council, Sixty-third Session, Supplement No. 2A* (E/6004), chap. I, para. 1.)

<sup>21</sup> Trade and Development Board resolution 88 (XII), Economic and Social Council resolution 1956 (LVI), and Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX), chap. II, art. 2 (c)); see Eduardo Novoa Monreal, *Nacionalización y recuperación de recursos naturales ante la ley internacional* (Mexico, D.F., Fondo de Cultura Económica, 1974) and *Defensa de las Nacionalizaciones ante Tribunales Extranjeros* (Mexico, D.F., UNAM, 1976).

<sup>22</sup> Charter of Economic Rights and Duties of States, art. 2 (b). See *Transnational Corporations: a Selected Bibliography* (United Nations publication, Sales No. E/F.75.I.5), and "Transnational corporations, Issues involved in the formulation of a code of conduct" (E/C.10/17).

<sup>23</sup> Charter of Economic Rights and Duties of States, art. 2 (c); Economic and Social Council resolution 1956 (LVI), General Assembly resolution 3398 (XXX) and resolution 6 (XXXIII) of the Commission on Human Rights. See *Panel on Foreign Investment in Developing Countries: Report on a Meeting Held in Tokyo from 29 November to 2 December 1971* (United Nations publication, Sales No. E.72.II.A.9); "Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa", report by Mr. Ahmed M. Khalifa, Special Rapporteur (E/CN.4/Sub.2/371), and the 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, vol. I (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. IV.

<sup>24</sup> For example, resolutions 31/7, 31/33 and 31/34 of 1976. The Special Committee has devoted particular attention to this document and its reports, like that of Mr. Ahmed M. Khalifa, are essential contributions to knowledge of the gravity and significance of this matter.

<sup>25</sup> K. M'Baye, *Le droit au développement comme un droit de l'homme* (Strasbourg, Institut international des droits de l'homme, 1972); UNESCO, "Emergence du droit au développement en tant que droit de l'homme dans le contexte du nouvel ordre économique international" (SS-78/Conf.630/8); H. Gros Espiell, *Derecho internacional del desarrollo* (Universidad de Valladolid, 1975), *El derecho al desarrollo como un derecho de la persona humana* (Caracas, Universidad Simón Bolívar, 1978); J. Monnier, "La Suisse et le développement du droit international", J. Freymond, ed., *La Suisse et la diplomatie multilatérale*, Geneva, Institut universitaire de hautes études internationales, 1976, p. 258.

<sup>26</sup> See the statement by the representative of Senegal in the Commission on Human Rights on 10 February 1978 (E/CN.4/SR.1435, para. 12).

<sup>27</sup> See foot-note 14 above.

<sup>28</sup> See foot-note 19 above.

<sup>29</sup> A. Miaja de la Muela, "El principio del enriquecimiento sin causa en el derecho internacional clásico y el nuevo orden

economico internacional", *Temis-Symbolae García Arias*, 33-36, Facultad de Derecho de la Universidad de Zaragoza, 1973-1974, p. 349; Gros Espiell, *Derecho internacional del desarrollo* (op. cit.).

<sup>30</sup> Letter of 18 March 1975.

<sup>31</sup> Letter of 5 February 1975.

<sup>32</sup> *Idem*.

<sup>33</sup> Letter of 3 February 1975.

<sup>34</sup> See the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-sixth session (E/CN.4/1128), para. 28.

<sup>35</sup> For example, in 1976, resolutions 31/83 and 31/84.

<sup>36</sup> General Assembly resolution 2542 (XXIV) of 11 December 1969.

<sup>37</sup> Article 3 (a).

<sup>38</sup> Articles 2 and 3 (c) and (d).

<sup>39</sup> General Assembly resolution 3519 (XXX) of 15 December 1975.

<sup>40</sup> Resolutions II and VI, adopted by the International Labour Conference at its fifty-sixth and fifty-seventh sessions respectively.

<sup>41</sup> See foot-note 34 above.

<sup>42</sup> Note verbale of 6 February 1975.

<sup>43</sup> See resolutions 3301 (XXIX) and 3302 (XXIX) of 13 December 1974.

<sup>44</sup> Resolution 2037 (XX) of 7 December 1965, principle III.

<sup>45</sup> Approving the inter-sectoral programmes on human rights and peace and on population.

<sup>46</sup> "UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racism."

<sup>47</sup> E/CN.4/1081 and Add.1 and 2. In addition to the resolutions of a general character listed in those documents, mention should be made of subsequent resolutions: 3070 (XXVIII) of 30 November 1973 (Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights); 3222 (XXIX) of 6 November 1974 (Human rights and fundamental freedoms); and 3246 (XXIX) of 29 November 1974.

<sup>48</sup> For example, resolutions 2621 (XXV) of 12 October 1970 and 2649 (XXV) of 30 November 1970, 3070 (XXVIII) of 30 November 1973; 3246 (XXIX) of 29 November 1974, 3314 (XXIX) of 14 December 1974 and 3382 (XXX) of 10 November 1975.

<sup>49</sup> Resolutions 2105 (XX) of 20 December 1965, 2189 (XXI) of 13 December 1966, 2326 (XXII) of 16 December 1967, 2465 (XXIII) of 20 December 1968, 2548 (XXIV) of 11 December 1969, 2708 (XXV) of 14 December 1970, 2878 (XXVI) of 20 December 1971, 2908 (XXVII) of 2 November 1972, 2918 (XXVII) of 14 November 1972, 2945 (XXVII) of 7 December 1972, 3031 (XXVII) of 18 December 1972, 3163 (XXVIII) of 14 December 1973 and 3328 (XXIX) of 16 December 1974. In regard to the observer status accorded to the Palestine Liberation Organization, see resolution 3237 (XXIX) of 22 November 1974, and in regard to its participation in the plenary meetings of the General Assembly as the representative of the Palestinian people, see resolution 3210 (XXIX) of 14 October 1974. In regard to the observer status of liberation movements recognized by OAU, see resolution 3280 (XXIX) of 10 December 1974, para. 6.

<sup>50</sup> Resolution 3318 (XXIX) of 14 December 1974.

<sup>51</sup> Resolutions 2288 (XXII) of 7 December 1967, 3117 (XXVIII) of 12 December 1973 and 3299 (XXIX) of 13 December 1974.

<sup>52</sup> For example, resolutions 1514 (XV) of 14 December 1960, 2625 (XXV) of 24 October 1970 (Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations); 2627 (XXV) of 24 October 1970 (Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations); 3103 (XXVIII) of 12 December 1973 (Basic principles of the legal status of the combatants strug-

gling against colonial and alien domination and racist régimes) and 3314 (XXIX) of 14 December 1974 (Definition of Aggression). The preamble to the Definition contains the words:

"Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence or to disrupt territorial integrity";

and article 7 states:

"Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration."

<sup>53</sup> Adopted in resolution 2106 A (XX) of 21 December 1965, opened for signature in New York on 7 March 1966 and in force since 4 January 1969.

<sup>54</sup> Adopted and opened for signature in resolution 3068 (XXVIII) of 30 November 1973.

<sup>55</sup> E/CN.4/1081, paras. 131-134 and 150-152; E/CN.4/1081/Add.1, para. 17.2; E/CN.4/1081/Add.2, paras. 2 and 41-44.

<sup>56</sup> E/CN.4/1081 and Add.1 and 2.

<sup>57</sup> See document A/9830, particularly para. 8; resolutions 1861 (LVI), 1863 (LVI), 1864 (LVI), 1865 (LVI), 1866 (LVI), 1892 (LVII) and 1908 (LVII) and the resolutions adopted at the fifty-eighth and fifty-ninth sessions, referred to earlier. In 1977, in resolution 2082 C (LXII), the Economic and Social Council, in taking note of resolution 6 (XXXIII) of the Commission on Human Rights.

"Suggests that the General Assembly should consider the applicability to United Nations organs of the solemn obligation of the administering Powers ... to promote the political, economic, social and educational advancement of the inhabitants of the Territories under their administration and to protect the human and natural resources of those Territories against abuses which was reaffirmed by the General Assembly in its resolution 31/7, and, in this connexion, should consider the desirability of exercising fully its powers in its capacity (recognized by the International Court of Justice in 1971) as Administering Authority for Namibia, either directly or through the United Nations Council for Namibia."

<sup>58</sup> See the 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, vol. II (*Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 23 (A/9023/Rev.1)*), chap. VI, annex I.

<sup>59</sup> 538th to 541st and 543rd meetings of the Policy and Programme Co-ordination Committee, held on 25, 26, 29 and 30 July 1974 (see E/AC.24/SR.538 to 541 and 543).

<sup>60</sup> Resolution 1892 (LVII) of 1 August 1974.

<sup>61</sup> Set up by General Assembly resolution 2248 (S-V) of 19 May 1967.

<sup>62</sup> General Assembly resolution 2145 (XXI); Security Council resolutions 245 (1968), 264 (1969), 269 (1969) and 276 (1970); *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion (I.C.J. Reports 1971)*, p. 16; *International status of South-West Africa, Advisory Opinion (ibid., 1950, p. 128)*; *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962 (ibid., 1962, p. 319)*.

<sup>63</sup> See the report of the United Nations Council for Namibia, vols. I and II (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 24 (A/9624)*). See also foot-note 17 above.

<sup>64</sup> See Addendum to the report of the United Nations Council for Namibia (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 24A (A/9624/*

Add.1), sect. VI). In addition to the studies on this Decree prepared by the International Institute of Human Rights for the Dakar International Conference on Namibia and Human Rights and published in the *Human Rights Journal*, Paris, Pedone, vol. IX, 2-3, 1976, see F. Rigaux, *Droit public et droit privé dans les relations internationales*, sect. IX ("La mise en œuvre du décret du 27 septembre 1974 sur les ressources naturelles de la Namibie dans les Etats Membres des Nations Unies") (Paris, Pedone, 1977), pp. 276-292.

<sup>65</sup> See A/AC.131/34.

<sup>66</sup> Reports of the Trusteeship Council: 23 June 1973-23 October 1974 (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 4 (A/9604)*) and 24 October 1974-29 August 1975 (*ibid., Thirtieth Session, Supplement No. 4 (A/10004)*).

<sup>67</sup> 1974 report of the Special Committee, vols. I - VI (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*, 1975 report, vols. I-IV (*ibid., Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*) and 1976 report, vols. I-IV (*ibid., Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*).

<sup>68</sup> 1977 report of the Special Committee, vols. I and II (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*).

<sup>69</sup> 1974 report of the Special Committee on Apartheid (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 22 (A/9622)*) and 1975 report (*ibid., Thirtieth Session, Supplement No. 22 (A/10022)*); see also "Review of Developments in South Africa since September 1974" (A/AC.115/L.418).

<sup>70</sup> This article reads:

"1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

"2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

"(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in sub-paragraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

"3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

"4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article."

<sup>71</sup> See the report of the Committee on the Elimination of Racial Discrimination (*Official Records of the General Assembly Twenty-ninth Session, Supplement No. 18 (A/9618)*).

<sup>72</sup> See the report of the Committee on the Elimination of Racial Discrimination (*ibid., Thirtieth Session, Supplement No. 18 (A/10018)*).

<sup>73</sup> E/CN.4/1081, paras. 116-120; see also *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No. E.68.XIV.2).

<sup>74</sup> E/CN.4/1081, paras. 112-115; E/CN.4/1081/Add.1, para. 14; E/CN.4/1081/Add.2, paras. 15-16.

<sup>75</sup> E/CN.4/1081/Add.1, paras. 15-16; E/CN.4/1081/Add.2, para. 2.

<sup>76</sup> See the report of the Governing Council of UNDP on its eighteenth session (*Official Records of the Economic and Social Council, Fifty-seventh Session, Supplement No. 2A* (E/5543/Rev.1), chap. III, sect. C).

<sup>77</sup> United Nations press releases DEV/886 of 17 January 1975 and DEV/889 of 27 January 1975.

<sup>78</sup> See the annual report of the Administrative Committee on Co-ordination for 1973-1974 (E/5488), chap. I, sect. D, and for 1974-1975 (E/5673 (Part I)). See also A/9830.

<sup>79</sup> On the co-ordination of these activities, see the 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, vol. I (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23* (A/10023/Rev.1), chap. VII, annex II), and the report of the Secretary-General (A/10080).

<sup>80</sup> General Assembly resolutions 2349 (XXII) and 3119 (XXVIII).

<sup>81</sup> See the report of the Secretary-General on the Programme (A/10331) covering the period from 26 November 1974 to 31 October 1975.

<sup>82</sup> On 17 December 1975, the General Assembly appointed the following 20 Member States as members of the Committee: Afghanistan, Cuba, Cyprus, German Democratic Republic, Guinea, Hungary, India, Indonesia, Laos, Madagascar, Malaysia, Malta, Pakistan, Romania, Senegal, Sierre Leone, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Yugoslavia. In 1976 the membership was enlarged to 23 (Guyana, Mali and Nigeria).

<sup>83</sup> Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 35* (A/31/35)). See also "Resolutions and decisions of the General Assembly and the Security Council relating to the question of Palestine, 1947-1975: Introductory note" (A/AC.183/L.2) and "Historical background of the question of Palestine in the United Nations 1947-1975" (A/AC.183/L.3).

<sup>84</sup> See the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 35* (A/32/35)).

<sup>85</sup> "Report on UNHCR assistance activities in 1974-1975 and proposed voluntary funds programme and budget for 1976" (A/AC.96/516 and Corr.1 and 2 and Add.1 and Corr.1).

<sup>86</sup> Third preambular paragraph.

<sup>87</sup> Para. 3.

<sup>88</sup> E/CN.4/1081, para. 222 and E/CN.4/1081/Add.2, para. 51.

<sup>89</sup> E/CN.4/1081/Add.1, para. 18 and E/CN.4/1081/Add.2, para. 50.

<sup>90</sup> E/CN.4/1081/Add.2, paras. 52-53.

<sup>91</sup> Resolution II on *apartheid* and the contribution of the International Labour Organisation to the International Year for Action to Combat Racism and Racial Discrimination.

<sup>92</sup> Resolution VI on the policy of colonial oppression, racial discrimination and violation of trade union rights pursued by Portugal in Angola, Mozambique and Guinea (Bissau).

<sup>93</sup> International Labour Conference, Sixtieth Session, Geneva, 1975, provisional records Nos. 11 and 14.

<sup>94</sup> See Records of the Fourth African Regional Conference, Nairobi, 26 November-6 December 1973 (ILO document GB.192/4/10, p. 32).

<sup>95</sup> *Ibid.*, p. 19.

<sup>96</sup> Para. 1.

<sup>97</sup> Para. 2.

<sup>98</sup> 18-29 November 1974.

<sup>99</sup> Report of the Twenty-ninth Session of the Committee on Constitutional and Legal Matters (FAO document CL 64/18).

<sup>100</sup> See FAO document CL 64/15.

<sup>101</sup> This reply contains a general comment which it is thought of interest to reproduce, viz., "WHO sees the right to self-determination as a matter which is inseparable from

fundamental human rights including those indications leading to respect for human rights. Such rights include 'the right to health'."

<sup>102</sup> Reply of 23 April 1975.

<sup>103</sup> "UNESCO's contribution to peace and its tasks with respect to the elimination of colonialism, and utilization of UNESCO's programme as a means of strengthening co-operation between European States in the interest of peace and security in Europe."

<sup>104</sup> "UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racism."

<sup>105</sup> See "UNESCO's contribution to peace and its tasks with respect to the elimination of colonialism and racism, and implementation of the relevant resolutions relating to the African peoples striving for their freedom" (UNESCO document 18C/14-15).

<sup>106</sup> Resolution A19-2, in which

"THE ASSEMBLY ...

"(1) RESOLVES that as long as the Government of Portugal refuses to implement the United Nations General Assembly Resolutions on the Declaration on the Granting of Independence to Colonial Countries and Peoples:

"(a) Portugal shall not be invited to attend any meetings convened by ICAO, except as provided in Articles 48 (b), 53 and 57 (b) of the Convention;

"(b) Portugal shall not be provided with any ICAO documents or communications, except (i) in cases where the Convention specifically requires that such documents or communications be provided and (ii) documents for meetings which Portugal is permitted to attend;

"(2) DECLARES that in case of conflict between the present Resolution and any other Assembly resolutions, the present Resolution shall prevail." (See ICAO, *Resolutions and Minutes, Assembly—Nineteenth Session (Extraordinary), New York, 27 February-2 March 1973* (document 9061, A19-Res., Min.).

<sup>107</sup> See the replies received from WHO, ICAO and UNIDO (document A/10080/Add.1), UNESCO and ITU (A/10080/Add.2) and WMO and UNHCR (A/10080/Add.3).

<sup>108</sup> Resolution 31/30 states in its operative part:

"(The General Assembly...)

"3. Expresses its appreciation to those specialized agencies and organizations within the United Nations system which have continued to co-operate in varying degrees with the United Nations in the implementation of the Declaration and other relevant resolutions of the General Assembly;

"4. Expresses its concern that the assistance extended so far by the specialized agencies and other organizations within the United Nations system to the colonial peoples, particularly those of Zimbabwe and Namibia, and to their national liberation movements is far from adequate in terms of the actual needs of the peoples concerned;

"5. Regrets that the World Bank and the International Monetary Fund have not yet taken the necessary measures towards the full and speedy implementation of the Declaration and other relevant resolutions of the General Assembly;

"6. Requests the specialized agencies and other organizations within the United Nations system to render or continue to render, as a matter of urgency, all possible moral and material assistance to the colonial peoples in Africa struggling for their liberation from colonial rule;

"7. Recommends that the organizations concerned should initiate or broaden contacts and co-operation with the colonial peoples in consultation with the Organization of African Unity, review their procedures with respect to the formulation and preparation of assistance programmes and projects and introduce greater flexibility in these procedures so as to be able to extend the necessary assistance without delay to help the colonial peoples and their national liberation movements in their struggle to exercise their inalienable right to self-determination and independence in accordance with General Assembly resolution 1514 (XV);

"8. Urges once again the specialized agencies and other organizations within the United Nations system, in accordance with the relevant resolutions of the General Assembly and the Security Council, to take all necessary measures to

withhold any financial, economic, technical or other assistance from the Government of South Africa and the illegal régime in Southern Rhodesia, to discontinue all support to them until they restore to the peoples of Namibia and Zimbabwe their inalienable right to self-determination and independence and to refrain from taking any action which might imply recognition of the legitimacy of the domination of the Territories by those régimes;

"9. *Notes with satisfaction* the arrangements made by several specialized agencies and organizations which enable representatives of the national liberation movements recognized by the Organization of African Unity to participate fully as observers in the proceedings relating to matters concerning their respective countries, and calls upon those international institutions which have not yet done so to follow this example and to make the necessary arrangements without delay;

"10. *Recommends* that all Governments should intensify their efforts in the specialized agencies and other organizations within the United Nations system of which they are members to ensure the full and effective implementation of the Declaration and other relevant resolutions of the United Nations and, in that connexion, should accord priority to the question of providing assistance on an emergency basis to the peoples in the colonial Territories and their national liberation movements;

"11. *Urges* the executive heads of the specialized agencies and other organizations within the United Nations system, having regard to the recommendations contained in paragraph 7 above, to formulate with the active co-operation of the Organization of African Unity and to submit, as a matter of priority, to their governing and legislative organs concrete proposals for the full implementation of the relevant United Nations decisions, in particular specific programmes of assistance to the peoples in the colonial Territories and their national liberation movements."

<sup>109</sup> Convened by General Assembly resolution 2966 (XXVII) of 14 December 1972 and held at Vienna (under General Assembly resolution 3072 (XXVIII) of 30 November 1973) from 4 February to 14 March 1975. (See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), Final Act, annex.

<sup>110</sup> *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. I, *Summary Records of Meetings* (United Nations publication, Sales No. E.75.V.3), 40th meeting, para. 71 and *ibid.*, vol. III, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.5), p. 61, document A/CONF.62/31.

<sup>111</sup> See *Report of the United Nations World Population Conference, 1974, Bucharest, 19-30 August 1974* (United Nations publication, Sales No. E.75.XIII.3), chap. II, A.

<sup>112</sup> *Idem.*

<sup>113</sup> See "First session of the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law Applicable in Armed Conflicts: report of the Secretary-General" (A/9669), para. 15.

<sup>114</sup> See H. Gros Espiell, "Le système interaméricain comme régime régional de protection internationale des droits de l'homme", *Académie de droit international, Recueil des cours, 1975*, II, Leyden, A. W. Sijthoff, 1976, vol. 145, pp. 1-55.

<sup>115</sup> The resolutions are as follows:

Resolution XVI — Transfer of Sovereignty of Geographic Regions of the Americas held by Non-American States (First Meeting of Consultation, Panama, 1939);

Resolution XX — Act of Habana Concerning the Provisional Administration of European Colonies and Possessions in the Americas (Second Meeting of Consultation, Habana, 1940);

Convention on the Provisional Administration of European Colonies and Possessions in the Americas (Second Meeting of Consultation, Habana, 1940);

Resolution XXXIII — Colonies and Occupied Territories in America and Creation of The American Committee on Dependent Territories (Ninth Inter-American Conference, Bogota, 1948);

Resolution VI — Reaffirmation of Inter-American Principles regarding European Colonies and Possessions in the Americas (Fourth Meeting of Consultation, Washington, D.C., 1951);

Resolution XLVI — Colonies and Occupied Territories in America (Tenth Inter-American Conference, Caracas, 1954);

Resolution XLVII — Colonies in American Territory (Tenth Inter-American Conference, Caracas, 1954);

Resolution XLVIII — American Committee on Dependent Territories (Tenth Inter-American Conference, Caracas, 1954);

AG/RES. 107 (III-0/73) — Study of the Provisions of The Charter of the Organization on the Admission of New Members (General Assembly, Third Regular Session, 1973);

AG/RES. 155 (IV-0/74) — Information on the Constitutional Evolution of the Non-autonomous Territories in the American Hemisphere and Other Territories in The Americas Having Ties with Countries Outside The Hemisphere (General Assembly, Fourth Regular Session, 1974);

Resolution on the topic Territorial Colonialism in America (Inter-American Juridical Committee, 1974);

Resolution on the Islas Malvinas (Falkland Islands) (Inter-American Juridical Committee, 1976).

<sup>116</sup> E/CN.4/1081/Add.2, para. 54.

<sup>117</sup> General Assembly resolutions 3280 (XXIX) of 10 December 1974 and 3382 (XXX) of 10 November 1975.

<sup>118</sup> E/CN.4/1081/Add.1, para. 19.

<sup>119</sup> E/CN.4/SR.1411, para. 7.

<sup>120</sup> See V. Y. Gheballi, "L'acte final de la Conférence sur la sécurité européenne dans la perspective des Nations Unies, *Annuaire français de droit international, 1975*, Paris, vol. XXI, pp. 97-99.

<sup>121</sup> See the comments concurring with the views expressed in this paragraph made by the representative of Austria in the Commission on Human Rights on 10 February 1978 (E/CN.4/SR.1435, para. 15).

<sup>122</sup> See the 1974 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, vol. II (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*, chap. V), and the 1976 report, vol. I (*ibid.*, *Thirty-first Session, Supplement No. 23 (A/31/23)*, chap. V). See also resolution 6 (XXXII) adopted by the Commission on Human Rights on 1 March 1976.

<sup>123</sup> General Assembly resolutions 2189 (XXI) of 13 December 1966, 2288 (XXII) of 7 December 1967, 2703 (XXV) of 14 December 1970, 3117 (XXVIII) of 12 December 1973, 3299 (XXIX) of 13 December 1974 and 3398 (XXX) of 21 November 1975. See also "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, Namibia and Territories under Portuguese domination and in all other Territories under colonial domination and efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa: 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" (*Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23A (A/7623/Rev.1/Add.1)*), and document A/6868/Add.1). See also the 1974 report of the Special Committee, vol. II (*ibid.*, *Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*, chap. IV) and the 1975 report, vol. I (*ibid.*, *Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*, chap. V). Resolutions 2 (XXVI) and 3 (XXVI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities; 3 (XXX) and 6 (XXXII) of the Commission on Human Rights and Economic and Social Council resolution 1864 (LVI) concerning Mr. Ahmed M. Khalifa's report on the "Adverse consequences for the enjoyment of human rights of political, military and other forms of assistance given to colonial and racist régimes in southern Africa" (E/CN.4/Sub.2/383/Rev.1, which will be issued as a United Nations publication). The Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974) helps to combat the activities of economic interests which conflict with the right to self-determination by stating in article 16 (2) that: "No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force".

### Chapter III

## SPECIFIC SITUATIONS CONCERNING THE RIGHT OF PEOPLES UNDER COLONIAL AND ALIEN DOMINATION TO SELF-DETERMINATION WHICH HAVE BEEN OR ARE BEING DEALT WITH IN THE UNITED NATIONS

251. The report of the Secretary-General<sup>1</sup> lists 41 situations involving the question of the implementation of the United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination. Obviously, these are not the only cases in which the right of peoples under colonial and alien domination to self-determination has been or could be invoked,<sup>2</sup> but the Special Rapporteur's tasks is confined to those cases which have been the subject of United Nations resolutions.<sup>3</sup> These cases are, in alphabetical order:

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| 1. American Samoa   | 20. Niue  |
| 2. Antigua  | 21. Palestine                                   |
| 3. Bahamas  | 22. Papua New Guinea                            |
| 4. Bermuda  | 23. Pitcairn                                    |
| 5. British Virgin Islands   | 24. Puerto Rico                                 |
| 6. Brunei   | 25. St. Helena                                  |
| 7. Cayman Islands   | 26. St. Kitts-Nevis-Anguilla                    |
| 8. Cocos (Keeling) Islands  | 27. St. Lucia                                   |
| 9. Comoro Archipelago   | 28. St. Vincent                                 |
| 10. Dominica  | 29. Seychelles                                  |
| 11. Falkland Islands (Malvinas)                                     | 30. Solomon Islands                             |
| 12. French Somaliland (French Territory of the Afars and the Issas) | 31. Southern Rhodesia                           |
| 13. Gilbert and Ellice Islands                                      | 32. South Africa                                |
| 14. Gibraltar   | 33. Spanish Sahara                              |
| 15. Guam  | 34. Territories under Portuguese administration |
| 16. Ifni  | 35. Tokelau Islands                             |
| 17. Montserrat  | 36. Turks and Caicos Islands                    |
| 18. Namibia   | 37. United States Virgin Islands                |
| 19. New Hebrides  | 38. West New Guinea (West Irian)                |

252. Since the date of the Secretary-General's report, some of the situations listed have changed. The Special Rapporteur will therefore cite first the cases of territories which achieved independence between the establishment of the United Nations and the date of that report, and next the cases which were settled during the same period through the implementation of the right of peoples to self-determination, but without accession to independence. He will then deal with the situations which were settled between the date of the report and the preparation of this study and, finally, with those situations which involve the question of the implementation of the United Nations

resolutions on the right of peoples under colonial and alien domination to self-determination, but which have not yet been settled.

#### A. Cases of territories which achieved independence between the entry into force of the Charter of the United Nations and the date of the Secretary-General's report

253. Those territories which became independent between the entry into force of the Charter and the date of the Secretary-General's report are:

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| 1. Indonesia <sup>4</sup>                        | 28. Mauritania <sup>31</sup>                  |
| 2. Libya <sup>5</sup>                            | 29. Sierra Leone <sup>32</sup>                |
| 3. Eritrea <sup>6</sup>                          | 30. United Republic of Tanzania <sup>33</sup> |
| 4. Laos <sup>7</sup>                             | 31. Western Samoa <sup>34</sup>               |
| 5. Cambodia <sup>8</sup>                         | 32. Burundi <sup>35</sup>                     |
| 6. Morocco <sup>9</sup>                          | 33. Rwanda <sup>36</sup>                      |
| 7. Tunisia <sup>10</sup>                         | 34. Algeria <sup>37</sup>                     |
| 8. Ghana <sup>11</sup>                           | 35. Jamaica <sup>38</sup>                     |
| 9. Malaysia <sup>12</sup>                        | 36. Trinidad and Tobago <sup>39</sup>         |
| 10. Guinea <sup>13</sup>                         | 37. Uganda <sup>40</sup>                      |
| 11. Cameroon <sup>14</sup>                       | 38. Kenya <sup>41</sup>                       |
| 12. Senegal <sup>15</sup>                        | 39. Malawi <sup>42</sup>                      |
| 13. Togo <sup>16</sup>                           | 40. Malta <sup>43</sup>                       |
| 14. Madagascar <sup>17</sup>                     | 41. Zambia <sup>44</sup>                      |
| 15. Zaire <sup>18</sup>                          | 42. Gambia <sup>45</sup>                      |
| 16. Somalia <sup>19</sup>                        | 43. Cook Islands <sup>46</sup>                |
| 17. Dahomey <sup>20</sup>                        | 44. Singapore <sup>47</sup>                   |
| 18. Niger <sup>21</sup>                          | 45. Guyana <sup>48</sup>                      |
| 19. Upper Volta <sup>22</sup>                    | 46. Botswana <sup>49</sup>                    |
| 20. Ivory Coast <sup>23</sup>                    | 47. Lesotho <sup>50</sup>                     |
| 21. Chad <sup>24</sup>                           | 48. Barbados <sup>51</sup>                    |
| 22. Central African Republic <sup>25</sup>       | 49. Southern Yemen <sup>52</sup>              |
| 23. People's Republic of the Congo <sup>26</sup> | 50. Nauru <sup>53</sup>                       |
| 24. Cyprus <sup>27</sup>                         | 51. Mauritius <sup>54</sup>                   |
| 25. Gabon <sup>28</sup>                          | 52. Swaziland <sup>55</sup>                   |
| 26. Mali <sup>29</sup>                           | 53. Equatorial Guinea <sup>56</sup>           |
| 27. Nigeria <sup>30</sup>                        | 54. Fiji <sup>57</sup>                        |
|  | 55. Oman <sup>58</sup>                        |

254. There were of course differences in the ways in which these territories exercised their right to self-determination by securing independence and sover-

eignty, as well as international recognition, just as there have been differences in that respect as regards the similar situations which have presented themselves between the date of the Secretary-General's report and the present day. The legal character and the status of the territories which subsequently became sovereign States also differed. As a result, United Nations action and the procedures followed have also differed, varying according to the circumstances. To analyse the differences would go beyond the scope of this study. It is sufficient to emphasize the vital importance, whether direct or indirect, of United Nations action in these processes and the international significance of the entry of the new States into the United Nations, which in practice has become tantamount to recognition of the free and sovereign nature of those States by the international community.

**B. Cases which were settled during the same period through the implementation of the right to self-determination, but without accession to independence**

255. During the same period, namely between the entry into force of the Charter and the date of the Secretary-General's report, other situations were settled through the right of peoples to self-determination being either invoked or implemented, but without this leading to independence and international sovereignty for the territories in question. Among other cases, mention may be made of two:

1. West Irian. In resolution 1752 (XVII) of 21 September 1962, the General Assembly took note of the Agreement of 15 August 1962 between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), acknowledged the role conferred upon the Secretary-General in the Agreement and authorized him to carry out the tasks entrusted to him. Under this Agreement "an act of free choice" took place, with the advice, assistance and participation of a special representative of the Secretary-General, and a United Nations Temporary Executive Authority was set up in West Irian (General Assembly decision of 6 November 1963). The act of free choice having been completed, both parties to the Agreement abided by its results and the question of West Irian was thus settled, through recognition and exercise of the right of its people to self-determination (resolution 2504 (XXIV) of 19 November 1969).

2. Ifni. In the report of the Secretary-General, reference is made to General Assembly resolutions 2072 (XX) of 16 December 1965 and 2229 (XXI) of 20 December 1966. In the latter resolution, the Assembly reaffirmed the right of the people of Ifni to self-determination and requested the administering Power to accelerate the decolonization of Ifni and to determine procedures for the transfer of powers with the Government of Morocco, bearing in mind the aspirations of the indigenous population. The report does not mention the fact that, as a result of these negotiations, Spain and Morocco concluded the agreement embodied in the Treaty of Fez of 4 January 1969,<sup>59</sup> which disposed of the outstanding question by

incorporating Ifni within Morocco. (In resolution 2428 (XXIII), the General Assembly took note of the intention to conclude this treaty.) In June 1969 the last Spanish troops left Ifni. The question may therefore be regarded as settled. In its advisory opinion on Western Sahara, the International Court of Justice, after citing resolutions 2229 (XXI) and 2354 (XXII), considered that Ifni had been "decolonized" as a result of its transfer to Morocco.<sup>60</sup>

**C. Cases of accession to independence between the date of the Secretary-General's report and the date of the present study**

256. The Special Rapporteur will now list those territories which became independent between the date of the Secretary-General's report<sup>61</sup> and that of the preparation of this study. Unlike the Secretary-General's main report, the two addenda thereto<sup>62</sup> do not contain a part IV on territories that have become independent since 4 February 1972. In this list, comprising States that are now in fact Members of the United Nations, a brief note is added only in those situations in which there continues to be a dispute that is kept under review in accordance with the relevant United Nations resolutions, as in the case of Mayotte. The list is given below:

1. Bahamas;<sup>63</sup>

2. The Comoros;<sup>64</sup> The case of the Comoro Archipelago is a particularly interesting one. The plebiscite of 22 December 1974, the background and circumstances of which are referred to in General Assembly resolution 3291 (XXIX) of 13 December 1974, resulted in the Comoro Archipelago, taken as a whole, voting for independence (94.56 per cent in favour, 5.44 per cent against). This vote in favour of independence occurred in the islands of Anjouan, Grande-Comore and Moheli. In the island of Mayotte, however, the plebiscite resulted in a vote against independence (63.82 per cent against, 36.18 per cent in favour). Independence was proclaimed unilaterally on 6 July 1975. A French law of 31 December 1975 (*Journal officiel* of 3 January 1976) provided that the islands of Anjouan, Grande-Comore and Moheli should cease to be part of the French Republic and that the population of the island of Mayotte should be consulted as to whether it wished to remain in the French Republic or become part of the new State of the Comoros. The referendum of 8 February 1976 resulted in a substantial majority in favour of remaining in the French Republic. In a second referendum, held on 11 April 1976, to determine the way in which this should be achieved, more than 79 per cent of the votes cast were invalid.<sup>65</sup> On 6 February 1976, the negative vote of France prevented the Security Council from adopting a resolution on the subject, which received 11 votes in favour, 1 against and 3 abstentions.<sup>66</sup> In its resolution 31/4 of 21 October 1976 the General Assembly considered null and void the referendums of 8 February and 11 April 1976 and condemned the presence of France in Mayotte, which constitutes a violation of the national unity, territorial integrity and sovereignty of the independent Republic of the Comoros. The question was considered at a

meeting of the Council of Ministers of OAU on 27 June 1977. An OAU *Ad Hoc* Committee met in September 1977 to make recommendations on this question. In resolution 32/7 of 1 November 1977, the General Assembly called upon the Government of the Comoros and the Government of France to work out a just and equitable settlement for the problem of the island of Mayotte which would respect the political unity and territorial integrity of the Comoros, in accordance with the relevant resolutions of the General Assembly.<sup>67</sup>

3. Grenada;<sup>68</sup>
4. Guinea-Bissau;<sup>69</sup>
5. Republic of Cape Verde;<sup>70</sup>
6. Democratic Republic of Sao Tome and Principe;<sup>71</sup>
7. People's Republic of Mozambique;<sup>72</sup>
8. Papua New Guinea;<sup>73</sup>
9. Suriname;<sup>74</sup>
10. People's Republic of Angola;<sup>75</sup>
11. Seychelles;<sup>76</sup>
12. Western Samoa;<sup>77</sup>
13. Djibouti;<sup>78</sup>
14. Solomon Islands;
15. Dominica.

All these States are already Members of the United Nations.

**D. Cases since the date of the Secretary-General's report involving the exercise of the right to self-determination, but without accession to independence**

257. With regard to the cases which were settled between the date of the Secretary-General's report and that of the present study through implementation of the principle of self-determination but without accession to independence, the Special Rapporteur wishes to mention the Mariana Islands and Niue.

1. Mariana Islands. On 15 February 1975, representatives of the Mariana Islands District of the Trust Territory of the Pacific Islands and representatives of the United States of America signed a covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America upon the termination of the trusteeship Agreement between the United States and the United Nations. The United States Secretary of the Interior issued a proclamation establishing 17 June 1975 as the date for a plebiscite to be held throughout the Mariana Islands District in order to enable residents of the District to approve or reject the covenant. The United States Government invited the Trusteeship Council to send a visiting mission to observe the plebiscite.<sup>79</sup> Following a referendum in June 1975, when the population voted for union with the United States, a United States law was adopted making the Territory a free associated State of the Union.

2. Niue. The General Assembly, in its resolution 3155 (XXVIII) of 14 December 1973, noted with approval that the Government and people of Niue had

resolved to achieve self-government in 1974, welcomed the invitation extended by the New Zealand Government to the United Nations to observe the act of self-determination in Niue and requested the Special Committee to send a special mission to observe that act of self-determination. The people of Niue voted by a substantial majority for self-government in free association with New Zealand on the basis of the Constitution and the Niue Constitution Act, 1974. In its resolution 3285 (XXIX) of 13 December 1974, the General Assembly took note of the result of the act of self-determination and considered that the people of Niue had thereby freely expressed their wishes and exercised their right to self-determination. In its reply of 13 October 1975, the Government of New Zealand made particular reference to Niue and the Cook Islands as cases involving the exercise of the right to self-determination which had enabled both territories to arrive at a political arrangement which it described as "independence in free association".

**E. Situations which have not yet been settled<sup>80</sup>**

258. There remain for consideration the United Nations resolutions adopted since 17 January 1974—the date of the Secretary-General's last report—relating to the specific situations listed earlier which have not yet been settled through implementation of the principle of self-determination. The Special Rapporteur does not intend to go into the details of each case by describing its historical, geographical, political, economic, social and cultural characteristics. Studies of this kind can be found in 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.<sup>81</sup> The Special Rapporteur will confine himself to certain cases, making such observations as he considers especially important for the purpose of drawing conclusions with regard to the implementation of the United Nations resolutions. Likewise, he will merely state a few basic criteria as regards those cases which involve a controversy or dispute between two or more States regarding one of the situations considered, and in which it would be inappropriate for him to give his personal view of the matter.

259. Listed below are the situations still awaiting settlement as regards the implementation of United Nations resolutions concerning the right to self-determination of peoples under colonial or alien domination.<sup>82</sup> Not all the current cases in which the right of peoples to self-determination may be applicable are mentioned; only those situations are cited concerning which there are relevant United Nations resolutions. In general, only the name of the case is given, and the references to the relevant United Nations resolutions are given in the foot-notes. In a few exceptional cases a reference is given in the body of the text to particular *de facto* or *de jure* situations which are, in the Special Rapporteur's opinion, of special importance. The list is set out below:

1. American Samoa<sup>83</sup>
2. Antigua<sup>84</sup>
3. Bermuda<sup>85</sup>

4. Brunei<sup>86</sup>
5. Cayman Islands<sup>87</sup>
6. Cocos (Keeling) Islands<sup>88</sup>
7. Falkland Islands (Malvinas)<sup>89</sup>
8. Gilbert and Ellice Islands<sup>90</sup>
9. Gibraltar<sup>91</sup>
10. Guam<sup>92</sup>
11. Montserrat<sup>93</sup>
12. Namibia. The Secretary-General's report refers to a long series of General Assembly, Security Council and Special Committee resolutions concerning this situation.<sup>94</sup> The only one which need be mentioned here, because of its particular significance, is General Assembly resolution 2145 (XXI) of 27 October 1966. This reaffirmed the right of the people of the Territory to self-determination, terminated the Mandate exercised by South Africa, decided that the Territory would come under the direct responsibility of the United Nations, and established what is now the United Nations Council for Namibia. The International Court of Justice has given constant consideration to the problem of South West Africa and Namibia, as is apparent from the following list: the advisory opinion of 1950 (*International status of South West Africa, I.C.J. Reports 1950*); the advisory opinion of 1955 (*Voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa, ibid., 1955*); the advisory opinion of 1956 (*Admissibility of hearings of petitioners by the Committee on South West Africa, ibid., 1956*); the judgment of 1962 (*South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, ibid., 1962*); the judgment of 1966 (*ibid., 1966*), and the advisory opinion of 1971 (*ibid., 1971*). The activities of the United Nations Council for Namibia and the United Nations Commissioner for Namibia, which have already been reviewed in chapter II of this study, are of particular interest and undoubtedly of especial importance in expediting and stimulating progress towards the exercise of self-determination by the Namibian people. The latest report of the United Nations Council for Namibia, covering the period 13 September 1975-20 October 1976, describes the Council's own activities and developments in the situation in Namibia.<sup>95</sup> The Security Council has repeatedly considered the question of Namibia,<sup>96</sup> affirming the principles which should be applied, condemning South Africa's occupation and its consequences and stressing the need for free elections to be held at the appropriate time under United Nations supervision and control so that the people of Namibia may decide its own future freely. The task entrusted to the Secretary-General by the Security Council (resolution 309 (1972) of 4 February 1972), was terminated, without any results having been achieved, in the light of the report to the Council of 30 April 1973 (Security Council resolution 342 (1973) of 11 December 1973). In its resolution 3399 (XXX) of 26 November 1975, the General Assembly decided on a long series of measures aimed at effective implementation of its previous resolutions and at stimulating the process of ending the illegal occupation of Namibia and of ensuring self-determination for its people.

Resolution 3400 (XXX) refers to the United Nations Fund for Namibia.<sup>97</sup> At its thirty-first session (1976), the General Assembly adopted various resolutions on Namibia: 31/147 concerning the programme of work of the United Nations Council for Namibia; 31/148 concerning intensification and co-ordination of United Nations action in support of Namibia; 31/151 concerning the United Nations Fund for Namibia; and 31/152 concerning observer status for the South West Africa People's Organization. In resolution 31/145 of 17 December 1976 the General Assembly decided that the International Conference in Support of the Peoples of Zimbabwe and Namibia, to mobilize help and assistance for those peoples, should be held in 1977. The International Conference on Namibia and Human Rights, organized jointly by the International Institute of Human Rights, the International Commission of Jurists and the International Association of Democratic jurists, at Dakar in January 1976, adopted a Declaration and a Programme of Action on the question of Namibia, self-determination and human rights. The solutions proposed by the so-called Windhoek Constitutional Conference, sponsored and inspired by the South African Government, and the proposals made by that Government in 1976 and 1977, were rejected and repudiated by the United Nations. 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 are of great interest with respect to the situation of Namibia. In the 1976 report, chapters IV and V are noteworthy. The report of the *Ad Hoc* Group of the Special Committee (General Assembly resolution 3481 (XXX) and the Special Committee's decision of 1 April 1976) is to be found in chapter VII of the above-mentioned report of the Special Committee. Also relevant is the resolution of the United Nations Water Conference entitled "Water policies in the occupied territories". The International Conference in Support of the Peoples of Zimbabwe and Namibia, held at Maputo from 16 to 21 May 1977, adopted a Declaration in support of the peoples of Zimbabwe and Namibia and a Programme of Action for the Liberation of Zimbabwe and Namibia. Owing to the historical importance and influence of this Declaration the Special Rapporteur reproduced its text in the annex to the earlier version of this study (E/CN.4/Sub.2/390) issued in 1977. On 4 November 1977 the General Assembly adopted resolutions 32/9 A to H, all of them without a single opposing vote. These resolutions relate to various questions concerning Namibia: (a) Implementation of the Nationhood Programme for Namibia; (b) United Nations Fund for Namibia; (c) Dissemination of information on Namibia; (d) Situation in Namibia resulting from the illegal occupation of the Territory by South Africa; (e) Action by intergovernmental and non-governmental organizations with respect to Namibia; (f) Programme of work of the United Nations Council for Namibia; (g) Intensification and co-ordination of United Nations action in support of Namibia; and (h) Special session of the General Assembly on the question of Namibia. Reference was made to the right of the people of Namibia to self-determination in resolution 3 (XXXIV) adopted by the Commission on Human Rights on 14 February 1978. Only through full and complete recognition of

the right of the people of Namibia to self-determination and acceptance of the role which SWAPO must necessarily play, together with the immediate and unconditional cessation of the illegal occupation by South Africa, can this case be resolved. The situation of Namibia, a most serious one in view of its general political implications, which constitutes an unacceptable defiance of the United Nations by South Africa and an affront to the whole of humanity, still lacks an immediate solution at the present time. In April-May 1978 the General Assembly devoted its ninth special session to the question of Namibia. At the end of this session the General Assembly adopted, by 119 votes in favour, none against and 21 abstentions a Declaration on Namibia and a Programme of Action in Support of Self-Determination and National Independence for Namibia (resolution S-9/2). This Declaration cites resolutions 2145 (XXI) of 27 October 1966 and 2248 (S-V) of 19 May 1967, the Dakar Declaration on Namibia and Human Rights, adopted by the International Conference on Namibia and Human Rights, held at Dakar in January 1976, the Maputo Declaration in Support of the Peoples of Zimbabwe and Namibia, adopted at Maputo in May 1977 and the Lusaka Declaration, adopted by the United Nations Council for Namibia in March 1978, as basic. This is a document of vital importance for the understanding and eventual solution of the problem. In April 1978 a Western proposal on Namibia was transmitted to the Security Council. On 27 July 1978 the Council adopted two resolutions in this connexion. In resolution 431 (1978) the Council, by 13 votes in favour and 2 abstentions (USSR and Czechoslovakia), requested the Secretary-General to appoint a Special Representative to supervise the general elections which will lead to the independence of the Territory. By resolution 432 (1978), which was adopted unanimously, the territorial unity and integrity of Namibia was recognized, and it was affirmed that Walvis Bay was part of Namibia. By its resolution 435 (1978) of 29 September 1978, it approved the report of the Secretary-General (S/12827) for the implementation of the proposal for a settlement of the situation in Namibia (S/12636) and endorsed his explanatory statement, reiterating that its objective is the withdrawal of South Africa's illegal administration from Namibia and the transfer of power to the people of Namibia with the assistance of the United Nations, in accordance with resolution 385 (1976). By its resolution 439 (1978), of 13 November 1978, the Council condemned the decision of the Government of South Africa to proceed, unilaterally, with the holding of elections in the Territory from 4-8 December 1978, and called upon South Africa immediately to cancel the elections. If not, it would initiate appropriate actions under the Charter of the United Nations. These unilateral elections have already taken place and the question is still unsolved. There is no change as regards the serious nature of the situation in Namibia.

13. *New Hebrides*.<sup>98</sup> The situation is evolving rapidly towards independence as decided in principle in the joint declarations by France and the United Kingdom on this question.

14. *Palestine*. The right of the Palestinian people to self-determination<sup>99</sup> has been affirmed by the General

Assembly in various resolutions (2535 B (XXIV) of 10 December 1969, 2649 (XXV) of 30 November 1970, 2672 C (XXV) of 8 December 1970, 2787 (XXVI) of 6 December 1971 and 2792 D (XXVI) of 6 December 1971).<sup>100</sup> At its twenty-ninth session, in 1974, the General Assembly invited the Palestine Liberation Organization, as the representative of the Palestinian people, to participate in the Assembly's deliberations in plenary meetings (resolution 3210 (XXIX) of 14 October 1974) and reaffirmed the inalienable rights of the Palestinian people, particularly its rights to self-determination without external interference and to national independence and sovereignty (resolution 3236 (XXIX) of 22 November 1974). At its thirtieth session, the General Assembly, in resolution 3376 (XXX), reaffirmed its resolution 3236 (XXIX); expressed its concern that no progress had been achieved in the matter; established a Committee on the Exercise of the Inalienable Rights of the Palestinian People, composed of 20 Member States,<sup>101</sup> to prepare and recommend to the General Assembly a programme with regard to this question, for consideration at the thirty-first session; and requested the Security Council to consider, as soon as possible after 1 June 1976, the question of the exercise by the Palestinian people of its rights. The Committee met in April 1976 and prepared a report referring expressly to the right of the Palestinian people to self-determination, independence and sovereignty.<sup>102</sup> The Security Council included in its agenda the item "Question of the exercise by the Palestinian people of its inalienable rights: report of the Committee established under General Assembly resolution 3376 (XXX)". At its 1924th meeting on 9 June 1976, the Council decided to invite the Palestine Liberation Organization to participate in its deliberations, as it had already done previously on 12 January 1976. But it was unable to adopt the draft resolution proposed by Guyana, Pakistan, Panama and Tanzania, which obtained 10 votes in favour with 4 abstentions, owing to the negative vote cast by a permanent member of the Council (United States of America).<sup>103</sup> In resolution 31/20 of 24 November 1976 the General Assembly recalled its resolution 3376 (XXX) and urged the Security Council to consider once again as soon as possible the recommendations made by the Committee the previous year. The Committee met again in April 1977.<sup>104</sup> In its resolution 31/186 of 21 December 1976 the General Assembly referred to the question of permanent sovereignty over national resources in the occupied Arab territories, and the United Nations Water Conference (March 1977), in its resolution X, affirmed the inalienable right of the Palestinian people, among others, to struggle to regain effective control over their natural resources, including water resources. The Committee on the Exercise of the Inalienable Rights of the Palestinian People has continued to study this situation.<sup>105</sup> On 2 December 1977, the General Assembly, in its resolution 32/40, recalling its resolutions 3236 (XXIX), 3376 (XXX) and 31/20, took note of the Committee's report and endorsed the recommendations contained in paragraphs 43 and 44 of that report noted with satisfaction the purport of the discussion in the Security Council on 27 October 1977, urged the Council to take as soon as possible a decision on the recommendations endorsed by the General Assembly in its resolution 31/20 as a

basis for the solution of the problem of Palestine, took measures to ensure the continuation of the activities of the Committee and decided to establish within the Secretariat of the United Nations a Special Unit on Palestinian Rights. On 14 February 1978, the Commission on Human Rights, in its resolution 2 (XXXIV), affirmed the inalienable right of the Palestinian people to self-determination without external interference and the establishment of a fully independent and sovereign State in Palestine and urged all States and international organizations to extend their support to the Palestinian people through their representative, the Palestine Liberation Organization.

15. Pitcairn.<sup>106</sup>
16. Puerto Rico.<sup>107</sup>
17. St. Helena.<sup>108</sup>
18. St. Kitts-Nevis-Anguilla.<sup>109</sup>
19. St. Lucia.<sup>110</sup>
20. St. Vincent.<sup>111</sup>
21. Southern Rhodesia.<sup>112</sup> In resolution 388 (1976) of 6 April 1976, the Security Council, acting under Chapter VII of the Charter and reaffirming its previous resolutions:<sup>113</sup>

2. *Decides* that all Member States shall take appropriate measures to prevent their nationals and persons in their Territories from granting to any commercial, industrial or public utility undertaking in Southern Rhodesia the right to use any trade name or from entering into any franchising agreement involving the use of any trade name, trade mark or registered design in connexion with the sale or distribution of any products, commodities or services of such an undertaking;

3. *Urges* States not Members of the United Nations, having regard to the principle stated in Article 2 of the United Charter, to act in accordance with the provisions of the present resolution."

On 14 January 1977, the Security Council, having regard to the hostile acts committed against Botswana by the illegal régime in Southern Rhodesia, adopted resolution 403 (1977), stating that it:

1. *Strongly condemns* all acts of provocation and harassment, including military threats and attacks, murder, arson, kidnapping and destruction of property, committed against Botswana by the illegal régime in Southern Rhodesia;

2. *Condemns* all measures of political repression by the illegal régime that violate fundamental rights and freedoms of the people of Southern Rhodesia and contribute to instability and lack of peace in the region as a whole;

3. *Deploras* acts of collaboration and collusion which sustain the illegal régime in Southern Rhodesia and encourage defiance with impunity of the resolutions of the Security Council, with adverse consequences for peace and security in the region;

4. *Demands* the immediate and total cessation forthwith of all hostile acts committed against Botswana by the illegal régime in Southern Rhodesia;

5. *Takes cognizance* of the special economic hardship confronting Botswana as a result of the imperative need to divert funds from ongoing and planned development projects to hitherto unplanned and unbudgeted for security needs necessitated by the urgent need to effectively defend itself against attacks and threats by the illegal régime in Southern Rhodesia;

6. *Accepts* the invitation of the Government of Botswana to dispatch a mission to assess the needs of Botswana in carrying out its development projects under the present circumstances, and accordingly requests the Secretary-General, in collaboration with appropriate organizations of the United Nations system, to organize with immediate effect financial and other forms of assistance to Botswana and to report to the Security Council not later than 31 March 1977;

7. *Requests* the United Nations and the organizations and programmes concerned, including the Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Development Programme, the Food and Agriculture Organization and the Fund for Agricultural Development, to assist Botswana to carry out the ongoing and planned development projects without interruption as stated in paragraph 5 and envisaged under paragraph 6 of this resolution;

8. *Appeals* to all States to respond positively in providing assistance to Botswana, in the light of the report of the mission of the Secretary-General, in order to enable Botswana to carry out its planned development projects;

9. *Decides* to remain seized of the matter.

The Council reverted to the question in resolution 409 (1977) of 27 May 1977, in which it reaffirmed its resolution 388 (1976) and the resolutions referred to therein, adopted further measures pursuant to Chapter VII of the Charter and decided to consider at a future date further measures under Article 41 of the Charter. The Council, in resolution 386 (1976) of 17 March 1976, commended the "Government of Mozambique for its decision to sever all economic and trade relations with Southern Rhodesia"; condemned "all provocative and aggressive acts, including military incursions, against the People's Republic of Mozambique by the illegal minority régime of Southern Rhodesia"; took note of "the urgent and special economic needs of Mozambique arising from its implementation of resolution 253 (1968), as indicated in the statement by its Foreign Minister"; and called upon all States and various international organizations to assist Mozambique. At its thirtieth session, the General Assembly adopted two particularly forceful resolutions (3396 (XXX) and 3397 (XXX) of 21 November 1975) relating to the situation in Southern Rhodesia. It condemned the assistance being given in some cases to the illegal minority régime in Rhodesia in violation of Article 25 of the Charter, called for a series of measures in favour of the Zimbabwe people and reiterated its conviction that the scope of the sanctions against the illegal régime must be widened to include all the measures envisaged under Article 41 of the Charter. At its thirty-first session (1976) the General Assembly adopted resolution 31/154 of 20 December 1976, which reaffirms the inalienable right of the people of Zimbabwe to self-determination, freedom and independence and the legitimacy of their struggle, and sets forth a series of measures to guide progress towards the self-determination of that people. The International Conference in Support of the Peoples of Zimbabwe and Namibia, decided upon by the General Assembly in its resolution 31/14 of 17 December 1976, was held in May 1977. With regard to the case of Southern Rhodesia attention must be drawn to the importance and interest of the reports of the Special Committee and of the *Ad Hoc* Group which operated in 1976. Also relevant is resolution X of the United

Nations Water Conference entitled "Water policies in the occupied territories". On 16 December 1977, the General Assembly in its resolutions 32/116 A and B, adopted by 113 votes to none with 10 abstentions, reiterated, co-ordinated and emphasized all its earlier resolutions condemning the illegal régime in Southern Rhodesia. These wide-ranging resolutions deal with all the questions that have been raised in the United Nations in connexion with the situation in Southern Rhodesia. Like the cases of Namibia and South Africa, the situation in Southern Rhodesia is a most serious example of flagrant and systematic violation of the right of peoples to self-determination, and so long as it is not resolved, it calls into question the complete success of the process of eliminating colonialism. See also Security Council resolutions 424 (1978), of 17 March 1978, which strongly condemned the armed invasion perpetrated by the illegal minority régime in the British colony of Southern Rhodesia against the Republic of Zambia; 437 (1978), of 10 October 1978, which noted with regret and concern the decision of the United States Government to allow the entry into that country of Ian Smith and some members of the illegal régime in Southern Rhodesia, and 423 (1978), of 14 March 1978, which condemned all attempts and manoeuvres by the illegal régime aimed at the retention of power by a racist minority and at preventing the achievement of independence by Zimbabwe.

22. South Africa.<sup>114</sup> The situation in South Africa, involving as it does a violation of the right of peoples to self-determination as well as an affront to other basic principles of the Charter, has been the subject of numerous, repeated and diverse United Nations resolutions, which are cited in the Secretary-General's report. In resolutions 2636 A (XXV) of 13 November 1970, 2862 (XXVI) of 20 December 1971 and 2948 (XXVII) of 8 December 1972 and its decision of 5 October 1973, the General Assembly decided to reject the credentials of South Africa. On 12 November 1974, the General Assembly, at its 2281st plenary meeting, upheld a ruling of its President that "on the basis of the consistency with which the General Assembly has regularly refused to accept the credentials of the delegation of South Africa, one may legitimately infer that the General Assembly would, in the same way, reject the credentials of any other delegation authorized by the Government of the Republic of South Africa to represent it, which is tantamount to saying in explicit terms that the General Assembly refuses to allow the delegation of South Africa to participate in its work". The Seminar held by the Special Committee against *Apartheid* in Paris from 28 April to 2 May 1975 adopted recommendations calling on the Security Council to impose a mandatory arms embargo against South Africa. Trade unions and other groups were asked to take action to prevent the production and shipment of arms and other military equipment for that country. It was specified that the arms embargo should cover arms, ammunition and all military vehicles and equipment; radar and other electronic equipment; so-called "dual purpose" aircraft and helicopters which could be used for, or converted to, military purposes; patents and know-how for production of military equipment; movement of skilled technicians destined for the South African arms industry; investments bolstering South Africa's domestic

industry; collaboration in the nuclear field; visits by military personnel or naval vessels or military aircraft; exchanges of military attachés, and military arrangements of any kind with the South African régime. In a section containing recommendations to end economic collaboration with South Africa, the Seminar urged States to oblige multinational corporations operating both in their countries and in South Africa to "make a choice" between them and South Africa. The Seminar recommended that the Special Committee against *Apartheid* should consider convening, in cooperation with OAU, an international conference to develop a co-ordinated strategy of action against economic collaboration with South Africa. It also recommended that campaigns be mounted to end emigration to South Africa and to isolate the Pretoria régime from international sports. It called for co-ordination of international action on this subject, for assistance by the United Nations to the anti-*apartheid* movements and for an intensified information programme. It urged all governments and peoples to provide such financial and material assistance as might be required by the liberation movements, and commended those governments and organizations already providing aid.<sup>115</sup> On 6 June 1975, the Security Council was unable to adopt a draft resolution relating to the question of Namibia which condemned South Africa and applied to it the measures provided for under Chapter VII of the Charter owing to the negative votes cast by France, the United Kingdom and the United States of America (see verbatim record S/PV.1829, pp. 68-70). The Security Council, in its resolution 387 (1976), of 31 March 1976, condemned South Africa's aggression against Angola, demanded that South Africa respect Angola's independence, sovereignty and territorial integrity and that it desist from the utilization of the international Territory of Namibia for its aggressive activities, and called upon South Africa to make compensation for the damage and destruction inflicted on Angola and to restore the equipment and materials which its invading forces had seized. In its resolution 393 (1976), of 30 July 1976, the Security Council:

1. *Strongly condemns* the armed attack of South Africa against the Republic of Zambia, which constitutes a flagrant violation of the sovereignty and territorial integrity of Zambia;

2. *Demands* that South Africa scrupulously respect the independence, sovereignty, air space and territorial integrity of the Republic of Zambia;

3. *Demands* that South Africa desist forthwith from the use of the international Territory of Namibia as a base for launching armed attacks against the Republic of Zambia and other African countries;

4. *Commends* the Republic of Zambia and other "front-line" States for their steadfast support of the people of Namibia in their legitimate struggle for the liberation of their country from illegal occupation by the racist régime of South Africa;

5. *Declares* that the liberation of Namibia and Zimbabwe and the elimination of *apartheid* in South Africa are necessary for the attainment of justice and lasting peace in the region;

6. *Further declares* that, in the event of South Africa committing further acts of violation of the sovereignty and territorial integrity of Zambia, the Security Council will meet again to consider the adoption of effective measures, in accordance with the appropriate provisions of the Charter of the United Nations.

In its resolution 402 (1976), of 22 December 1976, the Security Council:

1. *Endorses* General Assembly resolution 31/6 A, which, *inter alia*, calls upon all Governments to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans;

2. *Commends* the Government of Lesotho for its decision not to recognize the so-called independence of the Transkei;

3. *Condemns* any action by South Africa intended to coerce Lesotho into according recognition to the bantustan Transkei;

4. *Calls upon* South Africa to take immediately all necessary steps to reopen the border posts;

5. *Appeals* to all States to provide immediate financial, technical and material assistance to Lesotho so that it can carry out its economic development programmes and enhance its capacity to implement fully the United Nations resolutions on *apartheid* and bantustans;

6. *Request* the United Nations and the organizations and programmes concerned, in particular the United Nations Development Programme, the World Food Programme and all the United Nations specialized agencies, to assist Lesotho in the present situation and to consider periodically the question of economic assistance to Lesotho as envisaged in the present resolution;

7. *Requests* the Secretary-General, in collaboration with the appropriate organizations of the United Nations system, to organize, with immediate effect, all forms of financial, technical and material assistance to the Kingdom of Lesotho to enable it to overcome the economic difficulties arising from the closure of the border posts by South Africa owing of the refusal of Lesotho to recognize the so-called independence of the Transkei;

8. *Further requests* the Secretary-General to keep the situation under constant review, to maintain close liaison with Member States, regional and other intergovernmental organizations, the specialized agencies and international financial institutions, and to report to the Security Council at its subsequent meeting on the question;

9. *Decides* to remain seized of the question.

In March and April 1977 the Security Council devoted various meetings to and held a large number of consultations on the question of South Africa, which had been included in its agenda as a special item. It did not succeed in adopting any resolution (see verbatim records S/PV.1988, 1990, 1993, 1994, 1996, 1998-2005). Informal consultations and contacts are continuing at the time of the drafting of this study. On 31 October 1977 the Security Council adopted resolution 417 (1977). In this resolution the Council:

1. *Strongly condemns* the South African racist régime for its resort to massive violence and repression against the black people, who constitute the great majority of the country, as well as all other opponents of *apartheid*;

2. *Expresses* its support for, and solidarity with, all those struggling for the elimination of *apartheid* and racial discrimination and all victims of violence and repression by the South African racist régime;

3. *Demands* that the racist régime of South Africa:

(a) End violence and repression against the black people and other opponents of *apartheid*;

(b) Release all persons imprisoned under arbitrary security laws and all those detained for their opposition to *apartheid*;

(c) *Cease* forthwith its indiscriminate violence against peaceful demonstrators against *apartheid*, murders in detention and torture of political prisoners;

(d) Abrogate the bans on organizations and the news media opposed to *apartheid*;

(e) Abolish the "Bantu education" system and all other measures of *apartheid* and racial discrimination;

(f) Abolish the policy of bantustanization, abandon the policy of *apartheid* and ensure majority rule based on justice and equality;

4. *Requests* all Governments and organizations to take all appropriate measures to secure the implementation of paragraph 3 of the present resolution;

5. *Further requests* all Governments and organizations to contribute generously for assistance to the victims of violence and repression, including educational assistance to student refugees from South Africa;

6. *Requests* the Secretary-General, in co-operation with the Special Committee against *Apartheid*, to follow the situation and report to the Security Council, as appropriate, on the implementation of this resolution, and to submit a first report not later than 17 February 1978.

At its thirty-first session the General Assembly considered the question of South Africa on several occasions; *inter alia*, it again condemned the policy of *apartheid* and rejected the "independence" of the Transkei as invalid (resolution 31/6 A), requested the Security Council to establish an arms embargo (resolution 31/6 D) and again condemned South Africa for its illegal occupation of Namibia (resolution 31/146). At its thirty-second session the General Assembly, in resolution 32/105 A to O, adopted a series of measures on the following topics: United Nations Trust Fund for South Africa; International Anti-*Apartheid* Year; trade union action against *apartheid*; relations between Israel and South Africa; political prisoners in South Africa; military and nuclear collaboration with South Africa; economic collaboration with South Africa; dissemination of information on *apartheid*; programme of work of the Special Committee against *Apartheid*; assistance to the national liberation movement of South Africa; situation in South Africa; World Conference for Action against *Apartheid*; International Declaration against *Apartheid* in Sports; bantustans; investments in South Africa. This exceptional attention devoted by the General Assembly to the question of South Africa demonstrates the seriousness and enormous importance of the question. Special mention should be made of the General Assembly's condemnation, in resolutions 31/6 A and 32/105 N, of the South African bantustan policy which has so far received expression in the proclamation of the so-called independence of the Transkei and Bophuthatswana. In resolutions 31/31 and 32/37 the General Assembly referred to the United Nations Educational and Training Programme for Southern Africa. The Sub-Commission on Prevention of Discrimination and Protection of Minorities referred to human rights in Angola and to South African aggression in its resolution 3 (XXVIII) of 10 September 1975. The Declaration and Programme of Action adopted in May 1977 by the International Conference at Maputo in Support of the Peoples of Zimbabwe and Namibia constitutes a text of historic importance and influence. In its resolution 3 (XXXIV) of 14 February 1978, the Commission on Human Rights reaffirmed the right of the people of South Africa to self-determination. The Security Council, in its resolution 428 (1978) of 6 May 1978, strongly condemned the most recent armed invasion perpetrated by the

South African racist régime against the People's Republic of Angola. The question of South Africa, which is regrettably still unsettled, remains one of the most serious, dangerous and intolerable situations to be dealt with by the United Nations.

23. Western-Sahara.<sup>116</sup> In its reply of 19 March 1975, the Government of the Kingdom of Morocco gave a detailed and comprehensive exposition of its view on the question raised by this Territory. In that document reference is also made to the "status" of Sebta (Ceuta), Malilia (Melilla) and "the Riffian islands". The Special Rapporteur does not consider it necessary to analyse these cases since there are no United Nations resolutions on the subject in the process of implementation. The Special Rapporteur must also place on record the fact that, in July 1977, he received a study from the Government of Morocco entitled "The principle of the right to self-determination and the Moroccan territories still under colonial domination", which had been prepared by Mr. Mohammed Gharbi, Head of the Directorate of Legal Affairs and Treaties in the Ministry of State for Foreign Affairs. The Government of Spain, in a note dated 30 April 1975, stated that it was preparing a reply to the questions asked in the note verbale, in which certain relevant data needed for the preparation of this study were requested by the Secretary-General. It would transmit the reply as soon as possible. It added: "The Spanish Government also wishes at the present stage to express its desire that the views contained in its reply should be duly taken into account in the drafting of the report to be prepared by the Special Rapporteur". This final reply has not been received. Following resolution 3162 (XXVIII) of 14 December 1973, which is cited in the most recent report of the Secretary-General<sup>117</sup> and had been preceded by a number of other resolutions on this subject (2072 (XX), 2229 (XXI), 2354 (XXII), 2428 (XXIII), 2591 (XXIV) and 2711 (XXV)), the General Assembly adopted, on 13 December 1974, resolution 3292 (XXIX), in which it requested the International Court of Justice, "without prejudice to the application of the principles embodied in General Assembly resolution 1514 (VX), to give an advisory opinion at an early date on the following questions: 'I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?' 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?'" In that resolution the Assembly also urged the administering Power to postpone the referendum "until the General Assembly decides on the policy to be followed in order to accelerate the decolonization process in the Territory, in accordance with resolution 1514 (XV), in the best possible conditions, in the light of the advisory opinion to be given by the International Court of Justice". In addition to reiterating its invitation "to all States to observe the resolutions of the General Assembly regarding the activities of foreign economic and financial interests in the Territory and to abstain from contributing by their investments or immigration policy to the maintenance of a colonial situation in the Territory", the Assembly requested the Special Committee on the Situation with

regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under review, including the sending of a visiting mission to the Territory, and to report thereon to the General Assembly at its thirtieth session. In its advisory opinion of 16 October 1975, the Court found with regard to question I, unanimously, "that Western Sahara... at the time of colonization by Spain was not a territory belonging to no one (*terra nullius*)"; and with regard to question II, by 14 votes to 2, "that there were legal ties between this territory and the Kingdom of Morocco of the kinds indicated in paragraph 162 of this Opinion" and, by 15 votes to 1, "that there were legal ties between this territory and the Mauritanian entity of the kinds indicated in paragraph 162 of this Opinion". In the Court's opinion:

The materials and information presented to the Court show the existence, at the time of the 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.

The official Moroccan interpretation of the advisory opinion of the International Court of Justice was given by His Majesty Hassan II in his message of 16 October 1975. In 1975, a visiting mission of the Special Committee was received in the Territory. Faced with a conflict situation of which the so-called "Green March" provided evidence, the Security Council adopted resolutions 377 (1975), 379 (1975) and 380 (1975). The action taken by the Secretary-General in pursuance of those resolutions is described in his reports S/11863 and S/11874. On 14 November 1975, the Governments of Spain, Morocco and Mauritania concluded an agreement in Madrid on the question of Western Sahara. This Agreement made provision for the setting up of an interim tripartite administration, the end of the Spanish presence in the territory before 28 February 1976 and respect for the opinion of the population, expressed through the Jemâa. On 19 November 1975, Act 40/1975 on decolonization of Western Sahara was promulgated (*Boletín Oficial de las Cortes Españolas*, Nos. 1462 and 1469).<sup>119</sup> The General Assembly, in its resolution 3458 A (XXX), reaffirmed the inalienable right of the people of Spanish Sahara to self-determination and, in resolution 3458 B (XXX), took note of the Madrid Agreement, reaffirmed the right of the Saharan populations to self-determination, requested the parties to the Agreement to ensure respect for the freely expressed aspirations of those populations and requested the interim administration to take all necessary steps to ensure that the Saharan populations

would be able to exercise their right to self-determination through free consultations organized with the assistance of a representative of the United Nations appointed by the Secretary-General. At its special session on 26 February 1976, the Jemâa approved the Madrid agreement and expressed its satisfaction at the decolonialization of the territory of Western Sahara and its reintegration in Morocco and Mauritania, indicating that the Jemâa expresses the opinion of the Saharian populations and of all the tribes for which it is the authentic and legitimate spokesman. Since then, the situation has become extremely complicated. On 27 February 1976, the Frente Polisario proclaimed the establishment of the Democratic Sahrawi Arab Republic, which is reported to have been recognized by a number of States. A warlike situation exists between the Frente Polisario and the Governments of Mauritania and Morocco, with frequent armed confrontations, which are continuing at the present time. The question was discussed at the meeting of OAU at Addis Ababa. Subsequently, Mr. Olaf Rydbeck, the United Nations representative appointed by the Secretary-General, encountered various difficulties in carrying out his mission. On 17 April 1976, at Rabat, Morocco and Mauritania signed an agreement on the demarcation of their frontiers in Western Sahara. In August 1976, in the introduction to his annual Report on the work of the Organization the Secretary-General of the United Nations stated with reference to this situation:

During the last year we have been faced with some special problems of the decolonization process. The problem of Western Sahara is one of these. In the rapidly evolving circumstances in Western Sahara, it was obviously desirable to defuse the situation and to find ways to render all possible assistance in the implementation of the resolutions adopted by the General Assembly at its thirtieth session. In January 1976, therefore, I appointed a Special Representative who undertook an exploratory mission in the region. For reasons which are well known this mission could not be concluded. In these circumstances, I resumed my consultations with the parties concerned and interested, with a view to clarifying the situation and to decreasing the tension. However, further developments, and the subsequent actions of some of the parties, finally precluded further initiatives by me.<sup>120</sup>

In its resolution 2 D (XXIX), of 31 August 1976, the Sub-Commission on Prevention of Discrimination and Protection of Minorities referred to the question of human rights in Western Sahara. The Government of Morocco sent to the Sub-Commission and to the Special Rapporteur a long document entitled "Reply of the Kingdom of Morocco to the request for information contained in the operative part of resolution 2 D (XXIX) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of 31 August 1976" (E/CN.4/Sub.2/391). When the version of the present study issued in document E/CN.4/Sub.2/390 was considered in the Sub-Commission in 1977, the expert Mr. T. Ould Sidi referred at some length to the situation in Western Sahara and to the Madrid agreement. In its resolution 31/45 of 1 December 1976, the General Assembly reaffirmed the principle of the self-determination of the people of Western Sahara, took note of the decision taken by the Assembly of Heads of State and Government of OAU to convene an extraordinary session with a

view to finding a just and lasting solution to the problem of Western Sahara, and decided to postpone consideration of the question until its thirty-second session. On 28 November 1977, the General Assembly, in its resolution 32/22, reaffirmed the principle of the self-determination of peoples, expressed the hope that a just and lasting solution to the problem would be speedily achieved and decided to resume consideration of the question at the thirty-third session. The question will be considered at an OAU Summit Conference. The situation in Western Sahara continues without a definitive settlement and is giving rise to very serious and continuing confrontations in the territory, creating a difficult situation in the region. Its gravity at the present time is obvious.

24. Timor. As regards Timor<sup>121</sup> and its dependencies, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, meeting at Lisbon on 14 June 1975, expressed the hope that the necessary steps would be taken to enable the people of the Territory to attain the goals set forth in the Charter of the United Nations and in the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>122</sup> Following a complex series of developments involving a difference of opinion between the Governments of Portugal and Indonesia, the Security Council adopted resolution 384 (1975). Previously, the General Assembly, in resolution 3485 (XXX) of 12 December 1975, had affirmed the right of Timor to self-determination and independence; strongly deplored Indonesia's military intervention in Portuguese Timor and called upon it to withdraw its troops; drawn the attention of the Security Council to the situation, in conformity with Article 11, paragraph 3, of the Charter; called upon all States to respect the unity and territorial integrity of Portuguese Timor; requested the Portuguese Government to continue its co-operation with the Special Committee, and requested the Special Committee to send a fact-finding mission to the Territory in consultation with the Portuguese Government and the political parties in Timor. In the introduction to his annual Report (1976) the Secretary-General made a special reference to the situation in Timor, thus emphasizing the importance he attaches to it, stating:

Another such problem has arisen concerning the exercise of the right of self-determination by the people of East Timor in keeping with the resolutions of the General Assembly and the Security Council. My Special Representative held consultations with the parties concerned but could not visit the whole territory. Under the circumstances it was not possible for him to assess accurately the prevailing situation. I informed the Security Council of these developments. Subsequently the communication addressed to me by the Permanent Representative of Indonesia regarding the integration of the territory into Indonesia was circulated as a document of the Security Council.<sup>123</sup>

The Security Council, in its resolution 389 (1976), of 22 April 1976, called upon the Government of Indonesia to withdraw without further delay all its forces from the Territory; requested the Secretary-General to have his Special Representative continue the assignment entrusted to him under paragraph 5 of Security Council resolution 384 (1975) and pursue consultations with the parties concerned: further re-

requested the Secretary-General to follow the implementation of the present resolution and submit a report to the Security Council as soon as possible; called upon all States and other parties concerned to cooperate fully with the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory.

The General Assembly, in its resolution 31/53 of 1 December 1976:

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence and the legitimacy of their struggle to achieve that right;

2. *Reaffirms* its resolution 3485 (XXX) and Security Council resolutions 384 (1975) and 389 (1976);

3. *Affirms* the principles stated in that part of the Political Declaration adopted by the Fifth Conference of Heads of State or Government of Non-Aligned Countries relating to East Timor;

4. *Strongly deplors* the persistent refusal of the Government of Indonesia to comply with the provisions of General Assembly resolution 3485 (XXX) and Security Council resolutions 384 (1975) and 389 (1976);

5. *Rejects* the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence;

6. *Calls upon* the Government of Indonesia to withdraw all its forces from the Territory;

7. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter of the United Nations, to the critical situation in the Territory of East Timor and recommends that it should take all effective steps for the immediate implementation of its resolutions 384 (1975) and 389 (1976) with a view to securing the full exercise by the people of East Timor of their right to self-determination and independence;

8. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration, to follow the implementation of the present resolution, to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration and to report to the General Assembly at its thirty-second session.

The General Assembly, in its resolution 32/34 of 28 November 1977:

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence and the legitimacy of their struggle to achieve that right;

2. *Reaffirms* its resolutions 3485 (XXX) and 31/53 and Security Council resolutions 384 (1975) and 389 (1976);

3. *Rejects* the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence;

4. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration, to follow the implementation of the present resolution, to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration and to report thereon to the General Assembly at its thirty-third session;

5. *Requests* the Secretary-General in consultation with the Chairman of the Special Committee, in the meantime to send

urgently a special representative to East Timor for the purpose of making a thorough, on-the-spot assessment of the existing situation in the Territory and of establishing contact with the representatives of the Frente Revolucionária de Timor Leste Independente and the Government of Indonesia, as well as the Governments of other States concerned, in order to prepare the ground for a visiting mission of the Special Committee, and to report thereon to the Special Committee;

6. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter of the United Nations, to the critical situation in the Territory of East Timor and recommends that it should take all effective steps for the implementation of its resolutions 384 (1975) and 389 (1976) with a view to securing the full exercise by the people of East Timor of their right to self-determination and independence;

7. *Calls upon* the Government of Indonesia and the leadership of the Frente Revolucionária de Timor Leste Independente to facilitate the entry into East Timor of the International Committee of the Red Cross and other relief organizations in order to assist the people of the Territory;

The serious situation in Timor continues to be unresolved at the present time.

25. Tokelau Islands <sup>124</sup>

26. Turks and Caicos Islands <sup>125</sup>

27. United States Virgin Islands <sup>126</sup>

260. As regards the situation in Belize, the General Assembly, in a decision adopted at its 2318th plenary meeting on 13 December 1974, decided to defer consideration of the question of Belize until its thirtieth session (Belize is also included in a decision adopted at the 2202nd plenary meeting on 14 December 1973).<sup>127</sup> At its twenty-eighth session, the Sub-Commission considered the Special Rapporteur's preliminary report (E/CN.4/Sub.2/L.626), paragraph 144 of which contained a brief reference to the question of Belize, and Mr. Martínez Báez made a statement recalling the historic rights of Mexico to the Territory and Mexico's political tradition of refraining from invoking those rights against the exercise by the people of Belize of its right to self-determination.<sup>128</sup> Mr. Martínez Báez later wrote an article in a journal expanding the views and facts which he had touched on in the Sub-Commission.<sup>129</sup> In 1975 the General Assembly adopted resolution 3432 (XXX) of 8 December 1975, in which it reaffirmed the inalienable right of the people of Belize to self-determination and independence; declared that the inviolability and territorial integrity of Belize must be preserved; and called upon all States to respect the right of the people of Belize to self-determination, independence and territorial integrity and to facilitate the attainment by them of their goal of a secure independence. It also called upon the Government of the United Kingdom, as the administering Power, acting in consultation with the Government of Belize, and upon the Government of Guatemala to pursue urgently their negotiations for the resolution of their differences of opinion concerning the future of Belize. The adoption of this resolution in the General Assembly, by 110 votes to 9, with 16 abstentions, was preceded by a lengthy discussion in the Fourth Committee and various communications from the Governments of the United Kingdom and of Guatemala maintaining opposing

positions.<sup>130</sup> At its thirty-first session, the General Assembly adopted by 115 votes to 8, with 15 abstentions, resolution 31/50 of 1 December 1976 which:

1. *Reaffirms* the inalienable right of the people of Belize to self-determination and independence;
2. *Reaffirms* that the inviolability and territorial integrity of Belize must be preserved;
3. *Calls upon* all States to respect the right of the people of Belize to self-determination, independence and territorial integrity, to facilitate the attainment of their goal of a secure and early independence and to refrain from any action that would threaten the territorial integrity of Belize;
4. *Calls also upon* the Government of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, acting in close consultation with the Government of Belize, and the Government of Guatemala to pursue vigorously their negotiations in accordance with the principles of General Assembly resolution 3432 (XXX), in order to reach an early conclusion;
5. *Requests* the two Governments concerned to report to the General Assembly at its thirty-second session on such agreements as may have been reached in the negotiations referred to above;
6. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue its examination of the question.<sup>131</sup>

When the Special Rapporteur's report was discussed at the thirtieth session of the Sub-Commission (1977), some members referred to the question of Belize. On 29 August 1977 Mr. Gustavo Santizo Gálvez, observer for Guatemala, made a statement describing his country's position in considerable detail. The situation of Belize was discussed at the General Assembly of OAS in Granada in June 1977 and has been a subject of particular interest at various Latin American meetings, such as the meeting of Presidents held in Bogotá in August 1977, the meeting of Central American Ministers for Foreign Affairs held in Guatemala in the same month and the meeting of representatives of the Caribbean Countries held in Jamaica in December 1977. During the year the question gave rise to serious international tension, and has been and still is the subject of conversations and negotiations between the United Kingdom and Guatemala. In its resolution 32/32 of 28 November 1977, the General Assembly, by 126 votes to 4, with 13 abstentions, reaffirmed the inalienable right of the people of Belize to self-determination and independence, reaffirmed that the inviolability and territorial integrity of Belize must be preserved, and reiterated the views it had

expressed in its previous resolution 31/50 of 1 December 1976 concerning the current negotiations.

261. The situation with regard to the process of implementation of United Nations resolutions concerning the right of peoples under colonial and alien domination to self-determination is not the same in every case referred to in the preceding paragraphs. In cases such as those of Bermuda, the British Virgin Islands, Brunei, the Cayman Islands, the Cocos (Keeling) Islands, the Gilbert Islands, the New Hebrides, Montserrat, Pitcairn, St. Helena, the Tokelau Islands and Tuvalu, action is taking place in the short or medium term towards finding a formula for the exercise of the right to self-determination, a step which may in some of the cases result in independence. Other cases where the process has advanced to about the same extent are being considered by the General Assembly (Antigua, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, etc.). On the other hand, there are situations where a solution seems distant and points of divergence or disagreement remain, as pointed out by the General Assembly (Guam, American Samoa, the United States Virgin Islands), etc. There are also cases where a divergence of view concerning the form which the solution should take has occurred between two or more States Members of the United Nations and whose settlement is the subject of negotiation between those States (Spain and the United Kingdom in the case of Gibraltar; Argentina and the United Kingdom in the case of the Falkland Islands (Islas Malvinas), and Guatemala and the United Kingdom in the case of Belize) in accordance with the provisions of the relevant United Nations resolutions.<sup>132</sup> In the case of Western Sahara the problem involves complex questions which concern several States (Mauritania, Morocco and Spain) and which have been analysed not only in the United Nations but also in OAU. All these cases present difficult problems, particularly with regard to the reconciliation of respect for the territorial integrity of the State with the right to self-determination of peoples. The case of Palestine presents obvious difficulties and is at present having serious political consequence which can be resolved only with the realization of the self-determination of its people. Lastly, mention must be made of the cases which remain in southern Africa. Namibia, South Africa and Southern Rhodesia are three examples of the total negation of the right of peoples to self-determination, and of colonialism, racism and *apartheid*. As long as these situations subsist, the United Nations will not have completed the most important part of its struggle to ensure the triumph and realization of the right of peoples to self-determination.

### FOOT-NOTES TO CHAPTER III

<sup>1</sup> E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1.

<sup>2</sup> See para. 38 above.

<sup>3</sup> Three cases in which there have been no General Assembly resolutions since 1956 and 1961 are situations which do not come within the purview of current United Nations practice.

(a) Hungary. Since General Assembly resolution 1127 (XI) of 21 November 1956, no organ of the United Nations has adopted other resolutions on this situation;

(b) Tibet. Since General Assembly resolution 1723 (XV) of

20 December 1961, no organ of the United Nations has adopted other resolutions on this situation;

(c) In addition to cases (a) and (b), listed in the Secretary-General's report (see foot-note 1 above), there is the case of Jammu and Kashmir, in connexion with which also there have been no General Assembly or Security Council resolutions (see in that connexion Security Council resolution 80 (1950) of 14 March 1950). At the thirty-fourth session of The Commission on Human Rights, held in 1978, the representatives of India and Pakistan adopted opposing positions with regard to the inclusion of such situations in the list contained in the

present study (see E/CN.4/SR.1435, para. 7, and E/CN.4/SR.1437, para. 15). In the version of the present study circulated in 1978 (E/CN.4/Sub.2/405 (vol. I)) the case of Jammu and Kashmir was included (para. 253, 12). The Permanent Delegation of India to the United Nations, in its Note NY/PM/352/38/78, of 6 December 1978, referred to the question, objecting to its inclusion and maintaining that Jammu and Kashmir is an integral part of India. The Permanent Mission of India asked that its letter be appended to the study by the Special Rapporteur. The text of the Note is as follows:

"Dear Mr. Secretary-General,

"I am writing with reference to a study in document E/CN.4/Sub.2/405, Vols. I and II, entitled Implementation of United Nations resolutions relating to the right of peoples under colonial and foreign domination to self-determination, prepared by a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Héctor Gros Espiell.

"2. The Government of India have grave reservations regarding paragraph 253 of the report, and the list appended to it. We strongly object to the inclusion by Mr. Gros Espiell of the Indian State of Jammu and Kashmir, which is an integral part of India.

"3. The delegation of India had expressed its reservation at the 34th Session of the Commission on Human Rights, where an interim version of this report was presented. Our reservation, in a more general form than the one in which it was expressed, is referred to in foot-note 94 on page 183 of the report.

"4. I would be grateful if this letter could be appended to the report in the above-mentioned document, whenever it is next considered.

(Signed): Rikhi Jaipal."

"4 The report by the Secretary-General (E/CN.4/1081, part IV) lists, for each situation, the last General Assembly resolution before the Territory became independent or self-governing and, where applicable, the General Assembly resolution on its admission to membership of the United Nations. In the foot-notes below those resolutions are referred to in the order followed by the Secretary-General in his report: for instance, Indonesia, 301 (IV); 491 (V).

<sup>5</sup> 387 (V); 995 (X).

<sup>6</sup> 617 (VII). Federated with Ethiopia on 11 September 1952.

<sup>7</sup> 66 (I); 995 (X).

<sup>8</sup> 66 (I); 995 (X).

<sup>9</sup> 66 (I); 911 (X) and 1111 (XI). The reply forwarded on 19 March 1975 by the Government of Morocco included the text of the Spanish-Moroccan Declaration of 7 April 1956 (pp. 32-33), which immediately followed the independence of the Kingdom of Morocco. This Declaration, which the Special Rapporteur considers should be included in the present study, states the following:

"The Spanish Government and His Imperial Majesty Mohammed V, Sultan of Morocco, wishing to conduct their relations with each other in a particularly friendly way, on a basis of reciprocity, to strengthen their age-old ties of friendship and to consolidate peace in the region in which their two countries lie, have decided to publish the following Declaration:

"1. The Spanish Government and His Imperial Majesty Mohammed V, Sultan of Morocco, considering that the régime established in Morocco in 1912 is not in keeping with the present day, declare that in future the Convention signed in Madrid on 27 November 1912 can no longer govern Spanish-Moroccan relations;

"2. The Spanish Government accordingly recognizes the independence of Morocco proclaimed by His Imperial Majesty Sultan Mohammed V, in full sovereignty and with all the attributes of sovereignty, including the right of Morocco to its own diplomacy and army; it reiterates its determination to respect the territorial unity of the Empire as guaranteed by international treaties; and it undertakes to take the necessary measures to put that determination into effect. The Spanish Government also undertakes to give His Imperial Majesty the Sultan whatever aid and assistance may be deemed necessary by agreement between them, particularly with regard to foreign relations and defence.

"...

(Signed): Martín Artajo. Emarek Bekkai."

<sup>10</sup> 66 (I); 813 (IX); 1112 (XI).

<sup>11</sup> 66 (I); 1118 (XI).

<sup>12</sup> 66 (I); 1134 (XII).

<sup>13</sup> 66 (I); 1325 (XIII).

<sup>14</sup> 1608 (XV); 1476 (XV).

<sup>15</sup> 66 (I); 1490 (XV).

<sup>16</sup> 1416 (XIV); 1477 (XV).

<sup>17</sup> 66 (I); 1478 (XV).

<sup>18</sup> 66 (I); 1480 (XV).

<sup>19</sup> 1418 (XIV); 1479 (XV).

<sup>20</sup> 66 (I); 1481 (XV).

<sup>21</sup> 66 (I); 1482 (XV).

<sup>22</sup> 66 (I); 1483 (XV).

<sup>23</sup> 66 (I); 1484 (XV).

<sup>24</sup> 66 (I); 1485 (XV).

<sup>25</sup> 66 (I); 1488 (XV).

<sup>26</sup> 66 (I); 1486 (XV).

<sup>27</sup> 66 (I); 1287 (XIII); 1489 (XV).

<sup>28</sup> 66 (I); 1487 (XV).

<sup>29</sup> 66 (I); 1491 (XV).

<sup>30</sup> 66 (I); 1492 (XV).

<sup>31</sup> 66 (I); 1631 (XVI).

<sup>32</sup> 66 (I); 1623 (XVI).

<sup>33</sup> 66 (I); 1642 (XVI); 1667 (XVI); 1811 (XVII).

<sup>34</sup> 1626 (XVI).

<sup>35</sup> 1579 (XV); 1749 (XVII).

<sup>36</sup> 1579 (XV); 1748 (XVII).

<sup>37</sup> 1724 (XVI); 1754 (XVII).

<sup>38</sup> 66 (I); 1750 (XVII).

<sup>39</sup> 66 (I); 1751 (XVII).

<sup>40</sup> 66 (I); 1758 (XVII).

<sup>41</sup> 66 (I); 1812 (XVII); 1976 (XVIII).

<sup>42</sup> 66 (I); 1953 (XVIII); decision of 1 December 1964.

<sup>43</sup> 66 (I); 1950 (XVIII); decision of 1 December 1964.

<sup>44</sup> 66 (I); 1952 (XVIII); decision of 1 December 1964.

<sup>45</sup> 66 (I); 2008 (XX).

<sup>46</sup> 66 (I); 2064 (XX).

<sup>47</sup> 66 (I); 2010 (XX).

<sup>48</sup> 66 (I); 2071 (XX); 2133 (XXI).

<sup>49</sup> 66 (I); 2134 (XXI); 2136 (XXI).

<sup>50</sup> 66 (I); 2134 (XXI); 2137 (XXI).

<sup>51</sup> 66 (I); 2069 (XX); 2175 (XXI).

<sup>52</sup> 66 (I); 2183 (XXI); 2310 (XXII).

<sup>53</sup> 2347 (XXII).

<sup>54</sup> 2357 (XXII); 2371 (XXII).

<sup>55</sup> 2134 (XXI); 2376 (XXIII).

<sup>56</sup> 2355 (XXII); 2384 (XXIII).

<sup>57</sup> 66 (I); 2350 (XXII); 2622 (XXV).

<sup>58</sup> 2702 (XXV); 2754 (XXVI).

<sup>59</sup> See A. Remiro Brotons, *Las Cortes y la política exterior española (1942-1976)* (University of Valladolid), 1977, p. 47.

<sup>60</sup> *I.C.J. Reports 1975*, pp. 34 and 170.

<sup>61</sup> E/CN.4/1081.

<sup>62</sup> E/CN.4/1081/Add.1 of 19 January 1973 and E/CN.4/1081/Add.2 of 17 January 1974.

<sup>63</sup> General Assembly resolution 3051 (XXVIII).

<sup>64</sup> See "Comoro Archipelago: working paper prepared by the Secretariat" (A/AC.109/L.941 and Corr.1 and Add.1) and General Assembly resolutions 3261 (XXVIII) and 3291 (XXIX). Admission to membership of the United Nations: Security Council resolution 376 (1975) and General Assembly resolution 3385 (XXX), which reaffirm the need to respect the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-Comore, Mayotte and Moheli. See also General Assembly resolutions 31/4 and 31/42 (Assistance to the Comoros).

<sup>65</sup> See *Le Monde*, 13 April 1976, p. 7.

<sup>66</sup> See S/PV.1888, p. 116.

<sup>67</sup> See "Question of the Comorian Island of Mayotte: letter dated 25 October 1977 from the Permanent Representative of Tunisia to the United Nations addressed to the Secretary-General" (A/32/305), annex II.

<sup>68</sup> General Assembly resolution 3204 (XXIX).

<sup>69</sup> See the Declaration of Independence of the First People's National Assembly of Guinea-Bissau of 25 September 1973. See also General Assembly resolution 3061 (XXVIII) of 2 November 1973, the General Assembly decision of 18 December 1973 and General Assembly resolution 3205 (XXIX) of 17 September 1974.

<sup>70</sup> Independent since 5 July 1975, in accordance with the Lisbon Agreement of 19 December 1974. See Security Council resolution 372 (1975) and General Assembly resolutions 3363 (XXX) and 31/17 (Assistance to Cape Verde).

<sup>71</sup> Independent since 12 July 1975, in accordance with the Algiers Agreement of 19 December 1974. See Security Council resolution 375 (1975) and General Assembly resolution 3364 (XXX).

<sup>72</sup> Independent since 25 June 1975, in accordance with the Lusaka Agreement of 26 November 1974. See Security Council resolution 374 (1975) and General Assembly resolution 3365 (XXX) and 31/43 (Assistance to Mozambique).

<sup>73</sup> See Security Council resolution 375 (1975) and General Assembly resolution 3368 (XXX).

<sup>74</sup> See Security Council resolution 382 (1975) and General Assembly resolution 3413 (XXX).

<sup>75</sup> Independent since 11 November 1975, in accordance with the Alvar Agreement of 15 January 1975. See Security Council resolution 397 (1976) and General Assembly resolution 31/44.

<sup>76</sup> See the 1974 report of the Special Committee on the Situation with respect to the Implementation of the Declaration on the Granting of Independence to Colonial Peoples and

Countries, vol. III (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. X, and the 1975 report, vol. III (*ibid.*, *Thirtieth Session, Supplement No. 23 (A/100023/Rev.1)*), chap. XV. See also "Question of the Seychelles: letter dated 4 April 1975 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Acting Chairman of the Special Committee" (A/AC.109/483) and "Seychelles and St. Helena: working paper prepared by the Secretariat (A/AC.109/L.925 and Add.1), and the 1976 report of the Special Committee, vol. II (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. X; General Assembly resolutions 3158 (XXVIII), 3287 (XXIX) and 3430 (XXX); Security Council resolution 394 (1976) and General Assembly resolution 31/10.

<sup>77</sup> Security Council resolution 399 (1976) and General Assembly resolution 31/104.

<sup>78</sup> Independent since 27 June 1977, in consequence of the referendum of 8 May 1977 and the legislative elections of the same date. Security Council resolution 412 (1977) and General Assembly resolution 32/1. The situation of Djibouti before independence was under consideration as a pending case in the preceding version of the present study (E/CN.4/Sub.2/390, para. 230, 9). See A. Chenal, "Le territoire français des Afars et des Issas", *Annuaire du Tiers Monde*, 2, Paris, 1976.

<sup>79</sup> For the text of the Covenant, see the note verbale dated 3 March 1975 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (T/1799); see also the letter dated 21 April 1975 from the Permanent Representative of the United States of America to the United Nations addressed to the Acting President of the Trusteeship Council and the communication from the Fourth Mariana Islands Legislature concerning the Trust Territory of the Pacific Islands (T/COM.10/L.140).

<sup>80</sup> At 31 December 1976 the list of some Territories was as follows:

<i>Territory</i>	<i>Administering Authority</i>	<i>Area (sq. km)</i>	<i>Population (est.)</i>
<i>Africa</i>			
French Territory of the Afars and the Issas	France	22 000	106 000
Namibia	United Nations	824 292	852 000
Southern Rhodesia	United Kingdom	390 580	6 420 000
Western Sahara	Spain	266 000	117 000
<i>Asia</i>			
Brunei	United Kingdom	5 765	150 000
Timor	Portugal	14 925	637 000
<i>Atlantic and Caribbean</i>			
Antigua	United Kingdom	442	70 000
Belize	United Kingdom	22 965	127 000
Bermuda	United Kingdom	53	56 000
British Virgin Islands	United Kingdom	153	10 000
Cayman Islands	United Kingdom	259	11 000
Dominica	United Kingdom	751	70 000
Falkland Islands (Malvinas)	United Kingdom	11 961	2 000
Montserrat	United Kingdom	98	12 000
St. Helena	United Kingdom	122	5 000
St. Kitts-Nevis-Anguilla	United Kingdom	357	64 000
St. Lucia	United Kingdom	616	107 000
St. Vincent	United Kingdom	388	100 000
Turks and Caicos Islands	United Kingdom	430	6 000
United States Virgin Islands	United States	344	83 000
<i>Europe</i>			
Gibraltar	United Kingdom	6	30 000
<i>Pacific and Indian Oceans</i>			
American Samoa	United States	197	28 000
Cocos (Keeling) Islands	Australia	14	618
Gilbert Islands	United Kingdom	430	52 000
Guam	United States	549	100 000
New Hebrides	France/United Kingdom	14 763	95 000
Pitcairn	United Kingdom	5	92
Solomon Islands	United Kingdom	28 446	187 000
Tokelau	New Zealand	10	2 000
Trust Territory of the Pacific Islands	United States	1 779	115 000
Tuvalu	United Kingdom	36	5 887

Source: United Nations, *Objective: Justice*, vol. 8, No. 4, Winter 1976/1977, p. 35.

In the recommendation made by the Special Rapporteur a number of other cases arising from United Nations resolutions are added.

<sup>81</sup> The latest information is contained in the 1975 report of the Special Committee, vols. II-IV (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chaps. VIII-XXXI, and in the 1977 report (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*).

<sup>82</sup> Jammu and Kashmir are not included, in accordance with the statement in foot-note 3 above.

<sup>83</sup> See "American Samoa: working paper prepared by the Secretariat" (A/AC.109/L.947). See also the 1976 report of the Special Committee, vol. III (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XXII, and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXI. See General Assembly resolutions 3290 (XXIX), 31/55 and 32/24.

<sup>84</sup> See the 1974 report of the Special Committee, vol. VI (*ibid.*, *Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XXVIII; the 1976 report, vol. IV (*ibid.*, *Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XXV; and the 1977 report, vol. IV (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXX. See also General Assembly decisions of 13 December 1974 and 1 December 1976, and resolution 32/186.

<sup>85</sup> See the 1974 report of the Special Committee, vol. VI (*ibid.*, *Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XXIII, and "Bermuda: working paper prepared by the Secretariat" (A/AC.109/L.927 and Corr.1); see also the 1976 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XXVII, and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXIV. See General Assembly resolutions 3157 (XXVIII), 3289 (XXIX), 3427 (XXX), 31/52 and 32/29, reaffirming Bermuda's right to self-determination and independence.

<sup>86</sup> See General Assembly decision of 13 December 1974 and "Brunei: working paper prepared by the Secretariat" (A/AC.109/L.943). See General Assembly resolutions 3159 (XXVIII), 3424 (XXX), 31-52 and 32/23, reaffirming Brunei's inalienable right to self-determination and independence and calling upon the administering Power to promote the holding of free and democratic elections by the government authorities, in consultation with and under the supervision of the United Nations, for the purpose of exercise of the right to self-determination. See also the 1976 report of the Special Committee, vol. III (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XVIII, and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XV.

<sup>87</sup> See the 1974 report of the Special Committee, vol. VI (*ibid.*, *Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XXV, and the 1977 report, vol. IV (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXVI, and "Cayman Islands: working paper prepared by the Secretariat" (A/AC.109/L.936); *ibid.* (A/AC.109/L.1004). See General Assembly resolutions 3289 (XXIX) and 31/52, which reaffirm their right to self-determination.

<sup>88</sup> See the 1974 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XX; the 1976 report, vol. III (*ibid.*, *Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*); and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XII. See also "Question of the Cocos (Keeling) Islands—United Nations Visiting Mission to the Cocos (Keeling) Islands: draft decision proposed for adoption by the General Assembly" (A/AC.109/L.990); see General Assembly decisions of 13 December 1974, 8 December 1975 and 1 December 1976, and resolution 32/408.

<sup>89</sup> See the 1974 report of the Special Committee, vol. VI (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XXVI; the 1976 report, vol. IV (*ibid.*, *Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XXX; and the 1977 report, vol. IV (*ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXVIII. See also "Question of the Falkland Islands (Malvinas): letter dated 25 March 1975 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General" (A/AC.109/482). See also

General Assembly resolution 3160 (XXVIII) and its decisions of 13 December 1974 and 8 December 1975. In resolution 31/49 of 1 December 1976 the General Assembly:

"2. Expresses its 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 and to promote the well-being of the population of the islands;

"3. Requests the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to expedite the negotiations concerning the dispute over sovereignty as requested in General Assembly resolutions 2065 (XX) and 3160 (XXVIII);

"4. Calls upon the two parties to refrain from taking decisions that would imply introducing unilateral modifications in the situation while the islands are going through the process recommended in the above-mentioned resolutions;

"5. Requests both Governments to report to the Secretary-General and to the General Assembly as soon as possible on the results of the negotiations."

Subsequently, on 28 November 1977, decision 32/412 was adopted. After contacts between the parties, a joint United Kingdom-Argentine communiqué was issued on 26 April 1977, stating:

"The British and Argentine Governments have now reached agreement on the terms of reference for negotiations about the Falkland Islands (Malvinas) dispute, as follows: The Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland have agreed to hold negotiations from June or July, 1977, which will concern future political relations, including sovereignty, with regard to the Falkland Islands (Malvinas), South Georgia and South Sandwich Islands, and economic co-operation with regard to the said territories, in particular, and the South West Atlantic, in general. In these negotiations the issues affecting the future of the Islands will be discussed, and negotiations will be directed to the working out of a peaceful solution to the existing dispute on sovereignty between the two States, and the establishment of a framework for Anglo-Argentine economic co-operation which will contribute substantially to the development of the Islands and the region as a whole. A major objective of the negotiations will be to achieve a stable, prosperous and politically durable future for the Islands, whose people the Government of the United Kingdom will consult during the course of the negotiations. The agreement to hold these negotiations, and the negotiations themselves, are without prejudice to the position of either Government with regard to sovereignty over the Islands. The level at which the negotiations will be conducted, and the times and places at which they will be held, will be determined by agreement between the two Governments."

On 18 January 1976, the Inter-American Juridical Committee of OAS declared: "(1) That the Argentine Republic has an incontrovertible right of sovereignty over the Malvinas, and that accordingly the fundamental question to be decided is the procedure to follow for the reintegration of its territory; (2) That the "Shackleton Mission", sponsored by the Government of the United Kingdom of Great Britain and Northern Ireland, constitutes a unilateral innovation and therefore is contrary to resolutions 2065 (XX) and 3160 (XXVIII) of the United Nations; (3) That the presence of foreign warships in waters adjacent to the American States and the intimidating announcement by the British authorities of the sending of other ships constitute threats to the peace and security of the continent and flagrant violations of the international rules on non-intervention; (4) That all of this constitutes hostile conduct aimed at silencing the claims of the Argentine Government and obstructing the development of the negotiations recommended by the United Nations General Assembly", reaffirmed that "the authentic ideals of our Republics call for putting an end to all occupation, usurpation, enclaves or any form whatever of the continued existence of colonial rule in the Americas", and noted that "the scope of United Nations resolutions 2065 (XX) and 3160 (XXVIII) signifies a commitment accepted by the Governments of Argentina and the United Kingdom to accelerate the process aimed at restoring the legitimate sovereignty of the territory of the Malvinas, a juridical framework to which both Govern-

ments have the obligation to adapt their positions, for which reason the unilateral disruption of the negotiations by the United Kingdom of Great Britain and Northern Ireland is a violation of both the resolutions in question and the spirit of the commitment undertaken". With regard to the sending of a British scientific mission, see documents A/AC.109/482 and A/C.4/804 of 18 November 1975 (letters from the Permanent Mission of Argentina). In the second of these letters, it is stated that, in view of the British Government's proposal to send a mission to the Islas Malvinas with the object of carrying out an economic and financial survey, the Minister for External Relations of Argentina states:

"Since the question of the Islas Malvinas is subject to the procedure recommended by the United Nations General Assembly in its resolutions 2065 (XX) and 3160 (XXVIII), the parties to the dispute must abstain from any new unilateral action affecting the basic aspects of the question. Any such action will undermine the clear objective of the resolutions in question and will be contrary to the spirit which has prevailed in all the dealings so far between the two countries concerning the archipelago, and also is unacceptable to the Argentine Government."

The contacts and negotiations between the parties are continuing; the most recent series of negotiations was held in December 1977.

<sup>90</sup> See the 1974 report of the Special Committee, vol. V (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XXI; the 1975 report, vol. III (*ibid., Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. XXI; the 1976 report, vol. III (*ibid., Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XIX; and the 1977 report, vol. III (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XIX. See also "Gilbert and Ellice Islands, Pitcairn and the Solomon Islands: working paper prepared by the Secretariat" (A/AC.109/L.922 and Add.1), and General Assembly resolutions 3288 (XXIX) and 3426 (XXX), reaffirming their right to self-determination and independence and requesting the administering Power to continue to expedite the process of decolonization. See also the letter dated 24 September 1975 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General (A/C.4/786), relating to the separation from the Gilbert Islands of the Ellice Islands, which will form a new territory (Tuvalu). This separation took place as the result of a referendum observed by a visiting mission of the Special Committee. The question, which remains open, formed the subject of General Assembly resolutions 31/47 and 32/23. A constitutional conference has scheduled independence for 1 October 1978.

<sup>91</sup> For the background to the question see *Documentos sobre Gibraltar presentados a las Cortes Españolas por el Ministro de Asuntos Exteriores*, 4th ed., Madrid, 1966. For subsequent developments in the United Nations, see General Assembly decision 31/406, sect. C, resolution 3286 (XXIX) and the decision of 8 December 1975. See the 1975 report of the Special Committee, vol. III (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. XV. In 1975, the General Assembly took note of the conversations held between Spain and the United Kingdom with a view to making possible the initiation of formal negotiations and urged both Governments to pursue such exchanges with a view to reaching a lasting solution, bearing in mind the relevant resolutions of the General Assembly and the spirit of the Charter of the United Nations. In 1974, the Assembly had noted with regret that the negotiations envisaged in the consensus of 1973 had not yet been effectively initiated. In 1976, on 1 December, the General Assembly adopted a consensus in which,

"noting that, since the approval of its resolution 3286 (XXIX) of 13 December 1974, talks—which are still continuing—have been held between the Governments of Spain and of the United Kingdom of Great Britain and Northern Ireland on the question of Gibraltar, it urges both Governments to make possible without delay, taking due account of current circumstances, the initiation of the negotiations envisaged in the consensus approved by the Assembly on 14 December 1973 with the object of reaching a lasting solution to the problem of Gibraltar, in the light of the relevant resolutions of the General Assembly and in the

spirit of the Charter of the United Nations" (General Assembly decision 31/406, sect. C).

In 1977 the General Assembly adopted decision 32/411. The negotiations are continuing. See the 1976 report of the Special Committee, vol. II (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XIII; and the 1977 report, vol. II (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XI.

<sup>92</sup> See "Military activities and arrangements by colonial Powers in territories under their administration which might be impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: report of Sub-Committee I" (A/AC.109/L.974). See the 1976 report of the Special Committee, vols. I and III (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. V, annex IV, and chap. XXIII; and the 1977 report, vol. III (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXII. See also General Assembly resolutions 3290 (XXIX), 3429 (XXX), 31/58 and 32/28, reaffirming the right to self-determination. The last two resolutions also condemn the establishment of a military base on Guam.

<sup>93</sup> See General Assembly resolutions 3289 (XXIX), 3425 (XXX), 31/52 and 32/29. See also "Montserrat: working paper prepared by the Secretariat" (A/AC.109/L.944), and the 1975 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. XXVIII; the 1976 report, vol. IV (*ibid., Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. XXIX; and the 1977 report, vol. III (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXV. The administering Power has been requested to continue to expedite the process of decolonization.

<sup>94</sup> See E/CN.4/1081, paras. 140-154; E/CN.4/1081/Add.1, para. 17; E/CN.4/1081/Add.2, paras. 29-30. See also *United Nations Action in the field of Human Rights* (United Nations publication, Sales No. E.74.XIV.2 and Corr.2), chap. IV, F, and the 1975 report of the Special Committee, vol. II (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. X.

<sup>95</sup> See the report of the United Nations Council for Namibia (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 24 (A/31/24, vols. I-III)*).

<sup>96</sup> See Security Council resolutions 245 (1968), 246 (1968), 264 (1969), 269 (1969), 276 (1970), 283 (1970), 284 (1970), 301 (1971), 309 (1972), 310 (1972), 366 (1974) and 385 (1976).

<sup>97</sup> See the reports of the United Nations Council for Namibia (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 24 (A/9624)*) and *ibid., Thirtieth Session, Supplement No. 24 (A/10024)*, and the report of the Secretary-General on the United Nations Fund for Namibia (A/9725). See also General Assembly resolutions 3295 (XXIX), 3399 (XXX) and 3400 (XXX).

<sup>98</sup> See the 1974 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23 (A/9623/Rev.1)*), chap. XV; and the 1977 report, vol. III (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XIII. See also "New Hebrides: working paper prepared by the Secretariat" (A/AC.109/L.929 and Add.1), and General Assembly resolutions 3433 (XXX) of 8 December 1975 and 31/51 of 1 December 1976 reaffirming the right of the New Hebrides to self-determination and independence. See also resolution 32/26 of 28 November 1977, in which the General Assembly noted the joint statements of France and the United Kingdom of 26 March 1977 and 21 July 1977, and in paragraph 4 welcomed

"the joint commitment of the two administering Powers to independence for the New Hebrides and urges them to continue their efforts towards the early independence of the Territory, in full consultation with the people of the Territory".

<sup>99</sup> Resolution 2535 B (XXIX) of 10 December 1969 for the first time described as the "people of Palestine" the persons previously termed "refugees", thus according them the right to self-determination, a right possessed by peoples. See J. J. A. Salmon, "Une prérogative importante: la reconnaissance de situations", *Le Monde Diplomatique*, April 1975, p. 21. On this subject see the two documents prepared for the Committee on the Exercise of the Inalienable Rights of the

Palestinian People: A/AC.183/L.2 ("Resolutions and decisions of the General Assembly and the Security Council relating to the question of Palestine, 1947-1975") and A/AC.183/L.3 ("Historical background of the question of Palestine in the United Nations 1947-1975").

<sup>100</sup> See *United Nations Action in the Field of Human Rights* (op. cit.), Corr.2 ("The question of the people of Palestine"), and *Palestine Question: A Select Bibliography* (United Nations publication, Sales No. E/F.76.I.14).

<sup>101</sup> On 17 December 1975, the General Assembly appointed the following countries as members of the Committee: Afghanistan, Cuba, Cyprus, German Democratic Republic, Guinea, Hungary, India, Indonesia, Laos, Madagascar, Malaysia, Malta, Pakistan, Romania, Senegal, Sierra Leone, Tunisia, Turkey, Ukrainian SSR, Yugoslavia. On 22 December 1976 the General Assembly enlarged the Committee to include three more members: Guyana, Mali and Nigeria.

<sup>102</sup> See the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 35* (A/31/35)).

<sup>103</sup> See "Report of the Committee on the Exercise of the Inalienable Rights of the Palestine People: note by the Secretary-General" (S/12090), in particular the verbatim records S/PV.1928 and S/PV.1933-1938.

<sup>104</sup> See United Nations press release of 15 April 1977 (GA/PAL/24).

<sup>105</sup> See the report of the Committee on the Exercise of the Inalienable Rights of the Palestine People (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 35* (A/32/35)).

<sup>106</sup> See the 1974 report of the Special Committee, vol. V (*ibid.*, *Twenty-ninth Session, Supplement No. 23* (A/9623/Rev.1)), chap. XXI; the 1976 report, vol. III (*ibid.*, *Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. XIX; and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. XVII. See also "Gilbert and Ellice Islands, Pitcairn and Solomon Islands: working paper prepared by the Secretariat" (A/AC.109/L.922 and Add.1) and "Amendments proposed by the Chairman of Sub-Committee II to the draft conclusions and recommendations contained in document A/AC.109/L.948" (A/AC.109/L.989). See General Assembly resolutions 3156 (XXVIII) and 3290 (XXIX) and decisions 31/406 E of 1 December 1976 and 32/412 of 28 November 1977.

<sup>107</sup> See "Report of the Rapporteur of the Special Committee, Mr. Horacio Arteaga Acosta (Venezuela), on the implementation of paragraph 3 of the Special Committee's resolution of 30 August 1973 concerning Puerto Rico (A/AC.109/L.976). See also the resolutions adopted by the Special Committee after those of 28 August 1972 and 30 August 1973, referred to in the Secretary-General's report (E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1). The question of self-determination for Puerto Rico was discussed at the thirty-second session of the Commission on Human Rights in 1976 (see E/CN.4/SR.1345, paras. 1-4 and 13). The decisions and resolutions adopted by the Special Committee on 28 August 1972, 30 August 1973, 1 November 1974, 20 August 1975 and 1 September 1976, which affirm Puerto Rico's right to self-determination, can be seen in the "Report of the Rapporteur of the Special Committee, Mr. Sami Glayel (Syrian Arab Republic), on the implementation of the Special Committee's decision of 7 September 1976 concerning Puerto Rico" (A/AC.109/L.1191 and Add.1).

<sup>108</sup> See the 1974 report of the Special Committee, vol. III (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23* (A/9623/Rev.1)), chap. X; the 1976 report, vol. III (*ibid.*, *Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. XX; and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. XX; See also "Seychelles and St. Helena: working paper prepared by the Secretariat" (A/AC.109/L.925). See also General Assembly resolution 3290 (XXIX) and the decisions of 8 December 1975, 31/406, sect. A, of 1 December 1976 and 32/410 of 28 November 1977, reaffirming St. Helena's right to self-determination.

<sup>109</sup> See the 1974 report of the Special Committee, vol. VI (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23* (A/9623/Rev.1)), chap. XXVIII;

the 1976 report, vol. IV (*ibid.*, *Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. XXV; and the 1977 report, vol. IV (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. XXX. See also General Assembly decisions of 13 December 1974, 8 December 1975, 31/406, sect. E, of 1 December 1976 and 32/413 of 28 November 1977.

<sup>110</sup> *Idem.*

<sup>111</sup> *Idem.*

<sup>112</sup> See the 1974 report of the Special Committee, vol. III (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23* (A/9623/Rev.1)), chap. VIII; the 1975 report, vol. II (*ibid.*, *Thirtieth Session, Supplement No. 23* (A/10023/Rev.1)), chap. IX; the 1976 report, vols. I and II (*ibid.*, *Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. IV, annex I; chap. V, annex I, and chaps. VII and VIII; and the 1977 report, vol. II (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. VII. See also "Southern Rhodesia: working paper prepared by the Secretariat" (A/AC.109/L.923 and Add.1). See also General Assembly resolutions 3297 (XXIX), 3298 (XXIX), 3396 (XXX) and 3397 (XXX), and Security Council resolutions 386 (1976) and 388 (1976). As regards the implementation of these resolutions, see the seventh report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia (*Official Records of the Security Council, Thirtieth Year, Special Supplement No. 2* (S/11594/Rev.1), vols. I and II).

<sup>113</sup> 216 (1965), 217 (1965), 221 (1966), 232 (1966), 253 (1968) and 277 (1970). See B. G. Ramcharan, "Legal issues before the United Nations Sanctions Committee", *Dalhousie Law Journal*, vol. 3, 1976, pp. 540-559.

<sup>114</sup> See the resolutions referred to in the report of the Secretary-General (E/CN.4/1081 and Corr.1 and Add.1 and 2 and Add.2/Corr.1). See additional reports of the Special Committee against Apartheid (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 22A* (A/9622/Add.1)), parts I and II.

<sup>115</sup> See United Nations press release of 5 May 1975 (HR/280).

<sup>116</sup> See the 1974 report of the Special Committee, vol. III (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 23* (A/9623/Rev.1)), chap. XII; the 1975 report, vol. III (*ibid.*, *Thirtieth Session, Supplement No. 23* (A/10023/Rev.1)), chap. XIII; and the 1977 report, vol. II (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. IX.

<sup>117</sup> E/CN.4/1081/Add.2, para. 45.

<sup>118</sup> *I.C.J. Reports 1975*, p. 68.

<sup>119</sup> As regards this law, see Remiro Brotons (op. cit.), pp. 49-52.

<sup>120</sup> *Official Records of the General Assembly, Thirty-first Session, Supplement No. 1 A* (A/31/1/Add.1).

<sup>121</sup> See United Nations, *Decolonization* (publication of the Department of Political Affairs, Trusteeship and Decolonization), No. 7, August 1976, issue on East Timor. See also the 1974 report of the Special Committee, vol. II (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. X.

<sup>122</sup> See the United Nations press release of 16 June 1975 (GA/COL/29) and the letter dated 4 December 1975 from the Permanent Representative of Indonesia addressed to the Secretary-General (A/C.4/808). See also the 1976 report of the Special Committee, vol. II (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. XII.

<sup>123</sup> *Official Records of the General Assembly, Thirty-first Session, Supplement No. 1 A* (A/31/1/Add.1).

<sup>124</sup> See General Assembly decision of 13 December 1974, and "Tokelau Islands: working paper prepared by the Secretariat" (A/AC.109/L.928). See also General Assembly resolutions 3428 (XXX) of 8 December 1975 and 31/48 of 1 December 1976 and decision 32/409 of 28 November 1977, which reaffirm their right to self-determination. See the 1976 report of the Special Committee, vol. III (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23* (A/31/23/Rev.1)), chap. XVII; and the 1977 report, vol. III (*ibid.*, *Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1)), chap. XIV.

<sup>125</sup> See General Assembly resolutions 3289 (XXIX), 3427 (XXX), 31/52 and 32/29. See also "Turks and Caicos Islands: working paper prepared by the Secretariat" (A/AC.109/L.931). See also the 1975 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. XXVII; the 1976 report, vol. I (*ibid., Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. IV, annex IV, and chap. V, annex III; and the 1977 report, vol. III (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXV.

<sup>126</sup> See General Assembly resolutions 3157 (XXVIII), 3289 (XXIX), 3429 (XXX) and 32/31, reaffirming the right of the Virgin Islands to self-determination and independence, and "United States Virgin Islands: working paper prepared by the Secretariat" (A/AC.109/L.1005). See also the 1975 report of the Special Committee, vol. IV (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*), chap. XXVI; the 1976 report, vol. I (*ibid., Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. V, annex III; and the 1977 report, vol. IV (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXVII.

<sup>127</sup> See the 1975 report of the Special Committee, vol. IV (*ibid., Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*),

chap. XXX; and the 1977 report, vol. IV (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. XXIX.

<sup>128</sup> See E/CN.4/Sub.2/SR.715-731, 733, 735/Add.1 and 736-742, 727th meeting, p. 116.

<sup>129</sup> See A. Martínez Báez, "Belize y los derechos históricos de México", *Excelsior*, Mexico, D.F., 5 April 1976, p. 6.

<sup>130</sup> See the letters addressed to the Secretary-General by some Permanent Representatives (A/C.4/796, A/C.4/798, A/C.4/799, A/C.4/800, A/C.4/805 and A/C.4/806). See also *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 23, document A/10427, paras. 38 and 44, para. 39 and para. 72, draft resolution IX; and para. 41.

<sup>131</sup> See the 1976 report of the Special Committee, vols. I and IV (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chap. V, annex III, and chap. XXVI.

<sup>132</sup> See D. Mathy, "L'autodétermination de petits territoires revendiqués par des Etats tiers"—First part, *Revue belge de droit international*, vol. X, 1974-1, p. 197 (Les Iles Falklands (Malvinas)), and Second part, vol. XI, 1975-1, pp. 132 (Gibraltar) and 142 (Bélize), Brussels, Editions de l'Université de Bruxelles.

## Chapter IV

### FUTURE ACTION BY THE UNITED NATIONS TO IMPLEMENT ITS RESOLUTIONS RELATING TO THE RIGHT OF PEOPLES UNDER COLONIAL AND ALIEN DOMINATION TO SELF-DETERMINATION

262. The Special Rapporteur has already expressed his views on the work accomplished by the United Nations with regard to recognition of the right of peoples under colonial and alien domination to self-determination, on the difficulties and adverse factors which impede, interfere with and delay progress in this respect and on the way in which future United Nations action on the subject should be approached. The General Assembly, in resolution 2621 (XXV) of 12 October 1970, entitled "Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", expressed an over-all judgement on what had been done and adopted a comprehensive programme of action for subsequent years.<sup>1</sup> A reading of this programme shows that, although much progress has been made between 1970 and 1978, and many points in the programme have already been implemented, with positive results, a great deal remains to be done. The Special Rapporteur accordingly believes that United Nations action in this field should continue uninterruptedly until colonialism in all its forms has been completely eliminated, in accordance with what he has already stated with reference to the judgement on what the United Nations has done to ensure that peoples have the right to self-determination.

263. The conclusions set out below are based on the opinions expressed by the Special Rapporteur in the present study, especially in paragraphs 46-53 and 113-165. Those paragraphs cite the legal and political bases for the affirmations and conclusions set forth in the following paragraphs.

264. As far as the political aspects of the right to self-determination are concerned, the essential need is obviously to maintain the pace of decolonization. The events of 1974 and 1975, especially concerning Territories under Portuguese administration, are encouraging. Developments in 1976, 1977 and 1978, particularly with respect to the various situations in southern Africa and Palestine, afford some evidence of significant progress and offer prospects for moderate optimism. As regards the other specific situations reviewed in the present study, the pace of decolonization should likewise be maintained and even judiciously quickened, with particular attention being paid to those cases where no progress has been made in recent years and the United Nations has had to confine itself to reiterating its resolutions without any final results being achieved.

265. There is no doubt that the cases of violation of the right of peoples to self-determination which are

the most serious and dangerous for the international community are those in southern Africa. While not neglecting the other situations still unresolved and while continuing to pursue the process of resolving them, it is on the cases of Namibia, South Africa and Southern Rhodesia that the United Nations must concentrate its efforts in order to eliminate these redoubts of colonialism, *apartheid*, racial discrimination and large-scale violation of the rights and freedoms of the individual.<sup>2</sup>

266. In conformity with various ideas which are expounded in the present study, and which the Special Rapporteur considers to be of the utmost importance, special and continuing attention should be given to the economic, social and cultural aspects of the right of peoples to self-determination, bearing in mind the need to ensure that this right is exercised on a lasting basis, so as to avoid situations in which new and renewed forms of colonialism hamper or interfere with the full and complete enjoyment of the attributes of sovereignty which derive from the effective realization of the right of peoples to self-determination. In particular, as the General Assembly stated recently in paragraph 5 of its resolution 32/154, any measure directed against any State while exercising its sovereign right freely to dispose of its natural resources constitutes a flagrant violation of the right of self-determination of peoples. An end having been put to colonialism through the achievement of the right to political self-determination of peoples subjected to colonial and alien domination, the action required to ensure that these peoples enjoy the economic, social and cultural aspects of the right to self-determination and to prevent their political independence being only a profession of faith beneath which economic domination, social servility and cultural subordination and mimetism subsist, goes on.

267. Action to expose and condemn the adverse influence of diplomatic, military and economic assistance to régimes which deny and disregard the right of peoples to self-determination must be steadfastly pursued, and similar action must be taken with regard to economic interests which, in various guises, impede or adversely affect the process of decolonization<sup>3</sup> and the full enjoyment, after independence, of self-determination.

268. Likewise, the reaffirmation by the Security Council, the General Assembly and all other United Nations bodies of the legitimacy of the fight for the self-determination of peoples must be reiterated and duly spelt out, for the purpose of achieving its full effect and of securing the comprehensive assistance

which the international community and States should render to national liberation movements fighting for recognition of the right of their peoples under colonial and alien domination to self-determination, and which has contributed so effectively to the successes achieved, particularly in southern Africa. This assistance must be maintained and extended in a systematic, organized and more thorough fashion, so as to cover all forms of co-operation and assistance.<sup>4</sup>

269. It is essential to draw all the theoretical and practical conclusions from acceptance of the fact that the breach of an obligation arising out of recognition of the right of peoples to self-determination constitutes an international crime giving rise to an international responsibility, specifically characterized as such, for the State which has infringed its legal duties in the matter.

270. Action must be taken, through the adoption of appropriate conventions, to define the international penal responsibility of persons who commit very serious criminal acts—which will in future have to be classed as such by international law—arising out of violations of the right of peoples to self-determination committed with the object of establishing or maintaining colonial or alien domination by force.

271. It is essential to safeguard the rights and ensure the international protection of civilian populations in situations where there is an armed conflict arising out of the struggle against colonial and alien domination.

272. It is also essential that the principles of the Geneva Conventions and other relevant rules<sup>5</sup> should be applied to persons fighting and struggling to achieve the implementation of the principle of self-determination for their peoples under colonial and alien occupation. International humanitarian law, by its very nature, must cover and protect all combatants, without any discrimination, in a conflict which is the result of a struggle of a people for self-determination.

273. In particular, full effect and practical applicability must be given to the resolutions of the General Assembly relating to respect for human rights in all armed conflicts, particularly in the armed struggle against colonialism.<sup>6</sup>

274. In this connexion, particular importance attaches to the principle, affirmed in the 1977 Protocol I to the Geneva Conventions of 1949, extending humanitarian protection to so-called freedom fighters.

275. In view of the direct and immediate link between *apartheid* and denial of the right of peoples to self-determination, it is essential to obtain the largest possible number of signatures and ratifications to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*,<sup>7</sup> in order to ensure its early entry into force.

276. For the same reasons as are given in the preceding paragraph, further efforts must be made to achieve the complete universality and full application of the International Convention on the Elimination of All Forms of Racial Discrimination, which is already in force.

277. It is also of vital importance that peoples under colonial and alien domination should receive the

education and culture which will enable them to understand the meaning and scope of their right to self-determination. United Nations resolutions that may be adopted on this subject in the future must, if they are to be implemented in a more effective and practical manner, follow the same criteria as those underlying the resolutions adopted hitherto.<sup>8</sup> These are all measures of the utmost importance and significance for the future, which will have to be amplified and intensified with due regard for the need for systematic co-ordination.

278. Widespread dissemination of information on decolonization is highly important in the implementation of United Nations resolutions on the right of peoples under colonial and alien domination to self-determination, and it must be continued, encouraged and intensified.<sup>9</sup>

279. Similarly, the Special Rapporteur feels obliged to stress the point, in order that all the necessary conclusions may be drawn from it, that the right to self-determination, which is a *sine qua non* for the existence of human rights and freedoms, basically implies that peoples must be able to exercise their will freely and independently, without any kind of external interference and under a legal system which guarantees them freedom of expression. Although every people possesses the right to choose its own political, economic, social and cultural status, this right must be recognized in such a way that it can be exercised in conditions of complete freedom.

280. All measures adopted in this area must follow a unified and systematic approach, since joint and harmonious action by “the specialized agencies and international institutions associated with the United Nations” is essential, as repeatedly stated by the General Assembly.<sup>10</sup>

281. In this joint endeavour to secure more effective, better co-ordinated and fuller implementation of United Nations resolutions on the right to self-determination, non-governmental organizations can also play an important role, particularly in spreading information about the work of the United Nations in this field and in mobilizing public opinion.<sup>11</sup>

282. Regional organizations such as OAS, OAU, the League of Arab States and other similar bodies, as well as meetings of particular groups of nations, such as the group known as the non-aligned countries, can perform important work in efforts to ensure fuller implementation of United Nations resolutions on the right of peoples under colonial and alien domination to self-determination.

283. Self-determination of peoples and their right to be rid of colonial and alien domination is today a fundamental principle which all States are bound to accept under existing international law. Every possible conclusion, both logical and natural, which flows from that fact must be applied in solving the various problems of contemporary international law.

284. The process of speeding up the effective implementation and realization of the right of peoples to self-determination must be inspired by the conviction that it must be accomplished in combination with respect for all other human rights and freedoms. The General Assembly itself implicitly affirmed this

approach to the question in resolution 3222 (XXIX) of 6 November 1974, entitled "Human Rights and fundamental freedoms", in which *inter alia* it reiterates its support for the principles of the Universal Declaration of Human Rights (paras. 1 and 2) and reaffirms the right of peoples under colonial and alien domination to self-determination (paras. 3, 4 and 5). If the right of peoples under colonial and alien domination to self-determination is in the last analysis a basic human right, as well as a prerequisite for the existence of all other rights and freedoms, the conclusion must be drawn that it is meaningful only in a system aimed at ensuring full respect for all human rights. To affirm the right of peoples to self-determination, while denying the other human rights in fact and in practice and while disregarding personal freedom, freedom of thought, of movement, of assembly and of association and all the other civil, political, economic, social and cultural rights would be an absurd, tragic and deplorable contradiction that is quite unacceptable.

285. United Nations action in this area, which is of manifest importance, must continue to be as effective

in the future as it has been from 1960 to the present day. It needs to be realized, however, that this action is dependent upon, or at any rate largely conditioned by, the policies of the great Powers and the adverse influence of international economic interests operating either directly or indirectly, through the activities of certain Governments. To grasp this point is not to deny or despair of the possibilities afforded by the United Nations, but to approach the question rationally in order to comprehend the limitations which exist. The truth is that the progress already made towards decolonization—the result of a wide variety of complex factors, among which the work of the United Nations is of unquestionable importance—is the best guarantee that what remains to be done in this area can be done. Precisely for this reason, the execution of what should be the last stage in the history of decolonization needs to be properly planned, in order that the process to be completed should be as rapid, effective and radical as it ought to be and should remain consistent with respect for human rights and for the principles of international law laid down in the Charter of the United Nations.

#### FOOT-NOTES TO CHAPTER IV

<sup>1</sup> General Assembly resolution 2621 (XXV) reads as follows:

"(The General Assembly)

"...

"3. *Adopts* the following programme of action to assist in the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

"(1) Member States shall do their utmost to promote, in the United Nations and the international institutions and organizations within the United Nations system, effective measures for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in all Trust Territories, Non-Self-Governing Territories and other colonial Territories, large and small, including the adoption by the Security Council of effective measures against Governments and régimes which engage in any form of repression of colonial peoples, which would seriously impede the maintenance of international peace and security.

"(2) Member States shall render all necessary moral and material assistance to the peoples of colonial Territories in their struggle to attain freedom and independence.

"(3) (a) Member States shall intensify their efforts to promote the implementation of the resolutions of the General Assembly and the Security Council relating to Territories under colonial domination.

"(b) In this connexion, the General Assembly draws the attention of the Security Council to the need to continue to give special attention to the problems of southern Africa by adopting measures to ensure the full implementation of General Assembly resolution 1514 (XV) of 14 December 1960 and its own resolutions, and in particular:

(i) To widen the scope of the sanctions against the illegal régime of Southern Rhodesia by declaring mandatory all the measures laid down in Article 41 of the Charter of the United Nations;

(ii) To give careful consideration to the question of imposing sanctions upon South Africa and Portugal, in view of their refusal to carry out the relevant decisions of the Security Council;

(iii) To give urgent consideration, with a view to promoting the speedy elimination of colonialism, to the question of imposing fully and unconditionally, under international supervision, an embargo on arms of all kinds

to the Government of South Africa and the illegal régime of Southern Rhodesia;

(iv) To consider urgently the adoption of measures to prevent the supply of arms of all kinds to Portugal, as such arms enable that country to deny the right of self-determination and independence to the peoples of the Territories under its domination.

"(c) Member States shall also intensify their efforts to oppose collaboration between the régimes of South Africa and Portugal and the illegal racist régime of Southern Rhodesia for the preservation of colonialism in southern Africa and to end political, military, economic and other forms of aid received by the above-mentioned régimes, which enables them to persist in their policy of colonial domination.

"(4) Member States shall wage a vigorous and sustained campaign against activities and practices of foreign economic, financial and other interests operating in colonial Territories for the benefit and on behalf of colonial Powers and their allies, as these constitute a major obstacle to the achievement of the goals embodied in resolution 1514 (XV). Member States shall consider the adoption of necessary steps to have their nationals and companies under their jurisdiction discontinue such activities and practices; these steps should also aim at preventing the systematic influx of foreign immigrants into colonial Territories, which disrupts the integrity and social, political and cultural unity of the peoples under colonial domination.

"(5) Member States shall carry out a sustained and vigorous campaign against all military activities and arrangements by colonial Powers in Territories under their administration, as such activities and arrangements constitute an obstacle to the full implementation of resolution 1514 (XV).

"(6) (a) All freedom fighters under detention shall be treated in accordance with the relevant provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949.

"(b) The specialized agencies and international institutions associated with the United Nations shall intensify their activities related to the implementation of resolution 1514 (XV).

"(c) Representatives of liberation movements shall be invited whenever necessary, by the United Nations and other international organizations within the United Nations system to participate in an appropriate capacity in the proceedings of those organs relating to their countries.

"(d) Efforts shall be intensified to provide increased educational opportunities for the inhabitants of Non-Self-Governing Territories. All States shall render greater assistance in this field, both individually through programmes in the countries concerned and collectively by contributions through the United Nations.

"(7) All States shall undertake measures aimed at enhancing public awareness of the need for active assistance in the achievement of complete decolonization and, in particular, creating satisfactory conditions for activities by national and international non-governmental organizations in support of the peoples under colonial domination.

"(8) The United Nations as well as all States shall intensify their efforts in the field of public information in the area of decolonization through all media, including publications, radio and television. Of special importance will be programmes relating to United Nations activities on decolonization, the situation in colonial Territories and the struggle being waged by colonial peoples and the national liberation movements.

"(9) The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples shall continue to examine the full compliance of all States with the Declaration and with other relevant resolutions on the question of decolonization. The question of territorial size, geographical isolation and limited resources should in no way delay the implementation of the Declaration. Where resolution 1514 (XV) has not been fully implemented with regard to a given Territory, the General Assembly shall continue to bear responsibility for that Territory until such time as the people concerned has had an opportunity to exercise freely its right to self-determination and independence in accordance with the Declaration. The Special Committee is hereby directed:

"(a) To continue to assist the General Assembly in finding the best ways and means for the final liquidation of colonialism;

"(b) To continue to give special consideration to the views expressed orally or in written communications by representatives of the peoples in the colonial Territories;

"(c) To continue to send visiting missions to the colonial Territories and to hold meetings at places where it can best obtain first-hand information on the situation in colonial Territories, as well as to continue to hold meetings away from Headquarters as appropriate;

"(d) To assist the General Assembly in making arrangements in co-operation with the administering Powers, for securing a United Nations presence in the colonial Territories to participate in the elaboration of the procedural measures for the implementation of the Declaration and to observe the final stages of the process of decolonization in the Territories;

"(e) To prepare draft rules and regulations for visiting missions for approval by the General Assembly."

<sup>2</sup> In the introduction to his annual Report in 1976, the Secretary-General referred to the situation in this region in the following terms:

"In the process of decolonization the gaining of independence by Angola, Cape Verde, the Comoros, Mozambique, Papua New Guinea, Sao Tome and Principe, Seychelles and Surinam is a highly important development. This positive development, however, also serves to highlight the outstanding problems of southern Africa. These problems have for many years been central preoccupations of the United Nations and will continue to be so until a satisfactory solution is found. The persistence and repercussions of these problems in Africa and in a wider sphere create a serious potential threat to international peace and security. It is impossible to over-emphasize the need for urgent progress in this region of the world. Even now it may be very late for peaceful solutions. With every month that passes the likelihood of interracial violence on a large scale becomes greater.

"In Southern Rhodesia the alternative is a negotiated and orderly, but speedy, transition to majority rule, but this is an option which may not remain available much longer. I earnestly hope that it will be taken up while there is still time. Meanwhile we must continue our efforts to

assist Zambia and Mozambique to meet the great sacrifices incurred in closing their borders with Southern Rhodesia in response to the decisions of the Security Council.

The situation in Namibia is of particular concern to the United Nations because it has assumed responsibility for leading the Territory and its people to independence. Failure to make progress up to now has already led to more pronounced resistance and armed clashes. The proposals recently communicated to the United Nations by the Government of South Africa will be studied by the Security Council. I feel obliged to say, however, that it is a matter of regret that these proposals fall far short of the essential conditions stipulated by the United Nations and do not, therefore, constitute an adequate response to the needs of the situation. At this late hour it is essential that South Africa co-operate fully with the United Nations in resolving this matter to the satisfaction of the people of Namibia and of the international community.

"In South Africa, the world has now seen the tragic consequences which flow from the abhorrent policy of *apartheid*. The disturbances earlier this year in which hundreds of innocent people were killed or injured, and more recent and continuing clashes, again dramatically demonstrate that *apartheid* is a policy which inevitably leads to violence. As long as it is practised, it will be resisted by those whose basic human rights are denied.

"There can be no peace in southern Africa until the necessary changes, so long called for by the United Nations, come about. We can no longer afford delay, as the potential for major disaster becomes more real every day." (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 1A (A/31/1/Add.1)*)

<sup>3</sup> See the most recent reports by the Special Committee concerning the activities of these economic interests and the military activities mentioned (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chaps. IV and V. With regard to these questions, in 1977, the General Assembly adopted resolution 32/25 of 28 November 1977, which consolidates, reaffirms and supplements the earlier resolutions on the subject. The Commission on Human Rights considered the item at its thirty-fourth session (1978) in the light of Mr. A. M. Khalifa's report (E/CN.4/Sub.2/383) and adopted resolution 3 (XXXIV) of 14 February 1978.

<sup>4</sup> General Assembly resolution 32/36 of 28 November 1977, paras. 2, 5 and 12, and resolution 32/154 of 19 December 1977, entitled "Implementation of the Declaration on the Strengthening of International Security", para. 3.

<sup>5</sup> Geneva Protocol of 1925 (for the text, see League of Nations, *Treaty Series*, vol. XCIV, p. 66), the Hague Conventions and Declarations of 1899 and 1907 (for the text, see J. Brown Scott, ed., *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915), and the humanitarian rules affirmed by the International Conferences of the Red Cross at their sessions at Vienna in 1965 (resolution XXVIII (XX)) and at Istanbul in 1969 (resolution XVIII (XXI)), and in resolution XXIII of the International Conference on Human Rights (for the text, see *Final Act of the International Conference on Human Rights, Teheran, 22 April-13 May 1968* (United Nations publication, Sales No. E.68.XIV.2)).

<sup>6</sup> General Assembly resolutions 2396 (XXIII) of 2 December 1968, para. 8 (c); 2444 (XXIII) of 19 December 1968; 2446 (XXIII) of 19 December 1968, para. 5; 2597 (XXIV) of 16 December 1969, para. 1; 2674 (XXV) of 9 December 1970, para. 4; 2675 (XXV) of 9 December 1970; 2676 (XXV) of 9 December 1970, para. 3; 2844 (XXVI) of 20 December 1971, para. 2; 2853 (XXVI) of 20 December 1971 and 3103 (XXVIII) of 12 December 1973.

<sup>7</sup> General Assembly resolutions 3068 (XXVIII) of 30 November 1973 and 3380 (XXX) of 10 November 1975.

<sup>8</sup> Particular emphasis should be placed on the importance of the United Nations Educational and Training Programme for Southern Africa (resolutions 2349 (XXII) of 19 December 1967 and 31/31 of 29 November 1976), the study and training facilities for inhabitants of Non-Self-Governing Territories (resolution 31/32 of 29 November 1976), the emergency assistance for South African refugee students (resolution 31/126 of 16 December 1976), and the many measures adopted with

regard to the educational situation in Namibia. See also resolutions 32/37 and 32/38 adopted by the General Assembly on 29 November 1977.

<sup>9</sup> The broad-ranging programme of action set forth in resolutions 3482 (XXX) of 11 December 1975 and 31/144 of 17 December 1977 is an excellent scheme which should be executed speedily and effectively. In this connexion see the 1976 report of the Special Committee, vol. I (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*), chaps. II and III; and the 1977 report, vol. I (*ibid., Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chaps. II and III.

<sup>10</sup> Resolution 2621 (XXV) of 12 October 1970, which put forward a programme for the full implementation of the Declaration contained in resolution 1514 (XV) of 14 December 1960, and resolutions 3300 (XXIX) of 13 December 1975, 3421 (XXX) of 8 December 1975, 3482 (XXX) of 11 December

1975, and 31/30 of 29 November 1976. See the 1977 report of the Special Committee, vol. I (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*), chap. VI. General Assembly resolution 32/36, adopted on 28 November 1977 by 130 votes to none, with 4 abstentions, refers to the question: the Assembly expresses its concern that the assistance extended so far by the specialized agencies of the United Nations—especially the World Bank and the International Monetary Fund—to the colonial peoples, particularly those of Zimbabwe and Namibia, is far from adequate and requests the Economic and Social Council to continue to consider, in consultation with the Special Committee, appropriate measures for co-ordination of the policies and activities of the specialized agencies and other organizations within the United Nations system in implementing the relevant resolutions of the General Assembly.

<sup>11</sup> As recognized, for example, by the General Assembly in resolution 3482 (XXX) of 11 December 1975.

## Chapter V

### RECOMMENDATIONS

286. Under resolution 5 (XXX) of the Commission on Human Rights, the Special Rapporteur is required "to make recommendations... with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination". The Special Rapporteur has interpreted his terms of reference as meaning that he should make recommendations of a general character. It is not and cannot be his task to make individual or specific recommendations with regard to situations still awaiting solution, since that would constitute an unacceptable duplication of the functions 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, which has accomplished its tasks in such an outstanding and constructive manner and continues to do so.

287. Seen in this light, the recommendations which the Special Rapporteur has to make follow naturally from the conclusions expressed in the preceding paragraphs. Basically, they are that all United Nations organs and all organizations within the United Nations system should continue to take systematic and co-ordinated action to promote decolonization, in order that peoples under colonial and alien domination may enjoy the right to self-determination in all its political, economic, social and cultural aspects. The right of peoples to self-determination has been affirmed, recognized and accepted by the international community; its characteristics have been defined, and direct and indirect methods and procedures have been devised, to ensure that subject peoples may exercise it with the assistance and co-operation of the United Nations and of all States; the consequences of all this must be weighed with honesty and clarity for the time when recognition of principles must give way to effective action. Colonialism is doomed. The right of peoples to self-determination must now become fully realized, as the basis for a new international society in which international peace and security and human rights must

be more effectively assured. The Special Rapporteur can only conceive of this new international society as being based on respect for all human rights and freedoms, including the right to self-determination, and on the international guarantee of their effective protection on the basis of non-discrimination.

288. This fundamental recommendation is accompanied by one of a formal and juridical nature. Starting with the historic resolution 1514 (XV) of 14 December 1960, the General Assembly and other United Nations organs have put forth large numbers of resolutions covering political, military, legal, economic, social and cultural aspects of the right to self-determination. The novel and varied problems which have had to be confronted during this period have entailed the formulation of a long and complicated series of instruments which have now become a veritable maze of law. Nineteen years after the adoption of resolution 1514 (XV), which marked the beginning of a new stage in international law, the Special Rapporteur believes that a declaratory resolution should be drafted for adoption by the General Assembly to systematize, codify and up-date, in view of their progressive development, all the various matters relating to the right of peoples under colonial and alien domination to self-determination which have been the subject of the general resolutions adopted hitherto, and to deal with some new problems which contemporary international law must take up and resolve in this context, as stated in chapter IV of the present study. This instrument, the drafting of which the Special Rapporteur believes should be started forthwith and which would be both an up-to-date representation of and a tribute to the principles set forth in resolution 1514 (XV), would preside over the final stages in the implementation of the right of peoples to self-determination and over the end of colonialism, while being a further contribution to full and effective respect for human rights.

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