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THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: towards the achievement of the Sustainable Development Goals in the Non-Self-Governing Territories: social, economic and environmental challenges

Saint George's, Grenada
9 to 11 May 2018

DISCUSSION PAPER

PRESENTATION

BY

MR. SERGEI CHERNIAVSKY

Sergei Cherniavsky (Ukraine)
Independent Expert

SPECIAL COMMITTEE OF 24: PROCEDURES AND PRACTICES

Mr. Chairman,

I am extremely thankful for the invitation of the Committee to take part in the current 2018 Caribbean Regional Seminar. I would like to use this opportunity to express my deep gratitude to the government and people Grenada for hosting this event for the third time since 1990.

I also would like on a personal note to salute you, Mr. Chairman, for your involvement with the rights of people with disabilities in your earlier career at Perkins International and other institutions concerned with promotion of rights of the people with disabilities and especially your contribution through your academic papers on development, education, and aspects of disability. As part of my professional career at the United Nations I served as a Secretary of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities from 2001 through 2006 and could really appreciate your indispensable role in the social development of people with disabilities around the world.

The subject of my paper may seem to be boring, however, as we all know, no institution could survive without organizing itself through a set of certain procedures and practices. It is more so, when we turn to the United Nations practices and subsidiary bodies of the General Assembly of which the Special Committee is a major political institution concerned with decolonization.

In my presentation I will try to address certain procedural points in the history and current practices of the Committee with a view to aid in formulating its strategy towards successful implementation of the goals of the Third Decade for the Eradication of Colonialism. We are just two years away from the end of the Decade, so this issue is more acute than ever.

I would like to focus on just a few important aspects of the Committee's work pertaining to its current mandate and its limitations, admission of new members, consensus, subsidiary bodies, and, finally, its regional seminars. In my personal view, revitalization of some of those procedures might be helpful to the Committee. At the end of my paper I would suggest some recommendations to improve the Committee's work.

MANDATE

By mid-1960s, the Assembly set up decolonization machinery, by which the Special Committee of 24 became its main specialized body, mandated to monitor implementation of the Declaration and to provide the Assembly with recommendations to achieve the goals established by the Declaration. The Trusteeship Council continued to deal with Trust Territories[1], while the Fourth Committee[2] remained the Main Committee of the Assembly dealing

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[1] In setting up an International Trusteeship System, the Charter established the Trusteeship Council as one of the main organs of the United Nations and assigned to it the task of supervising the administration of Trust Territories placed under the Trusteeship System. Major goals of the System were to promote the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence. The Trusteeship Council is made up of the five permanent members of the Security Council --China, France, Russian Federation, United Kingdom and United States. The aims of the Trusteeship System have been fulfilled to such an extent that all Trust Territories have attained self-government or independence, either as separate States or by joining neighboring independent countries.[See, http://www.un.org/en/mainbodies/trusteeship/]. With the independence of Palau, formerly part of the Trust Territory of the Pacific Islands, in 1994, there presently are no trust territories, leaving the Trusteeship Council without responsibilities. (Since the *Northern Mariana Islands* was a part of the *Trust Territory of the Pacific Islands* and became a *commonwealth* of the USA in 1986, it is technically the only area to have not joined as a part of another state or gained full independence as a sovereign nation.)

with the decolonization issues as part of its mandate.

The most recent General Assembly resolution 72/111 of 7 December 2017 formulated the mandate of the Special Committee in the following terms:

> "...8. *Requests* the Special Committee to continue to seek suitable means for the immediate and full implementation of the Declaration and to carry out the actions approved by the General Assembly regarding the Second and Third International Decades for the Eradication of Colonialism in all Territories that have not yet exercised their right to self-determination, including independence, and in particular:
>
> (a) To formulate specific proposals to bring about an end to colonialism and to report thereon to the General Assembly at its seventy-third session;
>
> (b) To continue to examine the implementation by Member States of resolution 1514 (XV) and other relevant resolutions on decolonization;
>
> (c) To continue to examine the political, economic and social situation in the Non-Self-Governing Territories, and to recommend to the General Assembly, as appropriate, the most suitable steps to be taken to enable the populations of those Territories to exercise their right to self-determination, including independence, in accordance with the relevant resolutions on decolonization, including resolutions on specific Territories;
>
> (d) To develop and finalize, as soon as possible and in cooperation with the administering Power and the Territory in question, a constructive programme of work on a case-by-case basis for the Non-Self-Governing Territories, to facilitate the implementation of the mandate of the Special Committee and the relevant resolutions on decolonization, including resolutions on specific Territories;
>
> (e) To continue to dispatch visiting and special missions to the Non-Self-Governing Territories in accordance with the relevant resolutions on decolonization, including resolutions on specific Territories;
>
> (f) To conduct seminars, as appropriate, for the purpose of receiving and disseminating information on the work of the Special Committee, and to facilitate participation by the peoples of the Non-Self-Governing Territories in those seminars;
>
> (g) To take all steps necessary to enlist worldwide support among Governments, as well as national and international organizations, for the achievement of the objectives of the Declaration and the implementation of the relevant resolutions of the United Nations;
>
> (h) To observe annually the Week of Solidarity with the Peoples of Non-Self-Governing Territories..."[3]

The Special Committee, being a subsidiary body, derives its authority from the resolutions and decisions of the General Assembly, which renews its mandate on an annual basis. It should be noted that since 1997, the

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[2] In 1993, by operative paragraph 1(a) of its resolution 47/233 the Assembly established the Special Political and Decolonization Committee (Fourth Committee) by merging the Special Political Committee dealing with special political questions and the Fourth Committee concerned with decolonization issues. Thus, the newly established Main Committee moved to the second slot by taking place of the former Special Political Committee.

[3] A/RES/72/111, para. 8.

Committee has been formulating all its resolutions and decisions and submitting them directly to the plenary in its annual report to the Assembly[4].

Only General Assembly has the right to inscribe or remove the specific territory on or from the list of the non-self-governing territories. In the view of the UN Legal Counsel, "...the Special Committee can examine conditions in a territory *only after the Assembly has approved the inclusion that of territory in the list of territories to which the Declaration is applicable...* [emphasis added – S.C.]"[5]

ADMISSION OF NEW MEMBERS

Currently the Special Committee has 29 members, 12 of which are from the Latin American and the Caribbean Group of States (GRULAC), 9 from Asia-Pacific Group, 7 from African Group and one from Eastern Europe – Russian Federation, the only surviving original member from this group. There are no members from the Western European and Others Group (WEOG)[6].

At present, the Committee exercises full control over admission of new members. It does so through submission of draft decisions to the Assembly in its annual report. The decision consists of two parts: a) decision to enlarge membership and b) to fill the vacancy with a certain member(s) State[7]. In view of certain political consideration, the Committee exercises certain caution towards prospective membership of those States, with a vested interest in certain non-self-governing territories, which are subject to territorial disputes. On the other hand, enlargement of the Special Committee may inadvertently carry the risk of eroding the current consensus that the Committee enjoys.

CONSENSUS AS *MODUS OPERANDI*

One of the most remarkable principle of Committee's operation is a consensus it enjoys in decision-making. The Committee has never taken a vote on any issue since early 1990s. If my memory serves me well, the only vote it had taken before was on its decision concerning Puerto Rico. For the past two decades the Committee had adopted all its resolutions and decisions by consensus.

However, consensus does not mean that members of the Committee have a uniform view on all the issues. For example, during the hearing and adoption of the resolution on the Falkland Islands (Malvinas), some Committee's members express certain reservations on the text, but never stand in the way of adopting the draft.

In the same fashion, the delegation of the Russian Federation traditionally expresses reservations on the draft dealing with the specialized agencies and the international institutions associated with the United Nations[8].

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[4] Except for questions of the Falkland Islands (Malvinas), Western Sahara and Gibraltar. Draft resolution on Western Sahara and consensus on Gibraltar appear at the level of the Fourth Committee during consideration of decolonization items. Since early 1990s the resolution on the Falkland Islands (Malvinas) does not appear in the form of recommendation to the Assembly. Puerto Rico is a special case in the Committee: since the territory was removed from the list of non-self-governing territories by resolution 748 (VIII) of 27 November 1953, by which the Assembly released the United States from its obligations under Chapter XI of the Charter of the United Nations, the Committee is legally precluded from discussing Puerto Rico directly. Instead, the Committee considers on an annual basis its own decision concerning Puerto Rico, which permits the discussion of the developments in the territory and hearing of petitioners. Therefore, the resolution on Puerto Rico stays within the confines of the Committee and does not appear in its report in the form of recommendation to the Assembly.

[5] United Nations Juridical Yearbook, 1968. New York, 1970, p. 208.

[6] United Kingdom and United States stopped their formal cooperation with the Committee for political and ideological reasons, see letters from both administering Powers in, respectively, A/8276 and A/8277.

[7] It should be noted that before 1997 this was the Assembly 's prerogative: the prospective member State would address a letter to the President of the Assembly informing of its desire to seek membership in the Committee; subsequently, the Assembly would take a decision on no-objection basis to enlarge the membership of the Committee and fill the vacancy with the aspiring candidate.

[8] See A/AC.109/2017/SR.9.

In the last year or two, the Committee was unable to reach consensus on the visiting mission to Western Sahara, as proposed by the then Chair of the Committee in April 2017. Besides members of the Committee, some observer delegations had also taken the floor on this issue[9]. Furthermore, the consideration of the question on 12 June 2017 showed a wide divergence of views on the possibility of visiting mission to that territory and the status of representative of *Frente POLISARIO* in the Committee[10].

It also worth noting that the election of the Chair for the past four years was conducted by the ballot, rather than through usual consensus process -- the practice which existed before 2013.

As a former Secretary of the Committee I note with concern that the Committee has difficulty preserving consensus on all its decisions. On some of the issues such consensus is very fragile. Further rupture of the delicate fabric of consensus at the time when the Committee needs to present a united position to the outside world may hinder the implementation of the Committee's mandate.

SUBSIDIARY BODIES

In the past the Committee had sub-committees on specific territories. Such sub-committees covered Southern Rhodesia (1963), Aden and British Guiana (1964), South West Africa, Basutoland, Bechuanaland, Swaziland, Equatorial Guinea (Fernando Poo and Rio Muni) and Fiji (1966), Oman (1968). From 1976 through 1991 the Committee had Sub-Committee on Small Territories, which specifically dealt with small island territories. The Committee also had a Working Group (1962-1994) dealing with general issues of the methods of work.

The Committee may wish to tap its experience to form small working groups, of no more than 3 members each with mandate to develop case- by-case programmes for selected NSGTs, including visiting missions, when and where appropriate.

The Committee may also wish to re-establish its Working Group on the methods of work, which may be a catch-all basket for consideration of all odd issues which do not fit into its regular agenda.

Major criteria for prospective NSGTs for the working groups should be their maturity in meeting the criteria of self-government. Such criteria, for example, for the UK territories could be the removal of the reserved powers of the UK governors and meaningful devolution of power to the legislative bodies of the Territories.

REGIONAL SEMINARS

Regional seminars of the Special Committee are extremely crucial tool in ascertaining the views of the people of the Non-Self-Governing territories. In the absence of visiting missions held up due to political reasons and intransigence of certain administering Powers, the regional seminars provide an excellent opportunity to take stock of the current state of affairs in decolonization.

In the context of this paper, I would focus only on the procedural issues of the seminar based on my personal experience.

The rules of procedure give the Chair extraordinary powers to conduct the proceedings in extremely efficient manner. The Chair controls every aspect of the seminar: appoints two Vice-Chairs and a Rapporteur of the seminar from among the participating members of the Special Committee, declares the opening and closing of each meeting of the seminar, directs its discussions, ensures observance of the present rules, accords the right to speak, poses questions and announces decisions (Rule 2).

The Chair's extraordinary powers at the seminar are derived from the fact that only a subset of the Committee's membership attends the seminar, representing various geographic groups within the Committee. The Chair represents the whole Committee and as such enjoys the powers vested in his position by the Rules.

[9] See discussion in A/AC.109/2017/SR.2.
[10] A/AC.109/2017/SR.4.

It should be emphasized that the Special Committee is a subsidiary body of the General Assembly with limited membership. That means that non-members present at the seminar do not enjoy all privileges accorded to members only. Among them are the right to vote, is situation so warrants, and priority on the Chair speakers' list. In this connection the attention is drawn to the Annex, containing legal opinion regarding the subsidiary bodies of limited membership.

RECOMMENDATIONS

1. Given the Special Committee's past experience, the Committee may wish to consider re-establishing small *ad hoc* working groups (no more than 3 members), which could engage in negotiations with relevant administering Powers on visiting missions and prepare some skeleton recommendations on the specific territories.

2. The Chairman of the Special Committee may wish to enter into negotiations with the administering Powers regarding preparation of the visiting missions to American Samoa and Pitcairn. The Chair has the mandate for such negotiations by operative paragraph 4 of the annual resolution on visiting missions, which requests the Chair "to continue consultations with the administering Powers concerned and to report thereon to the Special Committee on the results of those consultations".

3. The Committee may wish to re-establish its Working Group on methods of work.

Annex

empowered. In recent years the practice normally followed is for the permanent mission in New York or, as the case may be, in Geneva to send a letter or note verbale indicating the names of the persons who will represent the State concerned. The term "accredit" is rarely used. In these communications and in the official records of the Council, such persons are normally called observers although neither Article 69 of the Charter nor rules 75 and 76 of the rules of procedure of the Council use this word. The request submitted under rule 19 of the rules of procedure do not deal with communications by which observers are appointed.

16 June 1971

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5. QUESTION WHETHER MEETINGS OF A COMMITTEE OR SUB-COMMITTEE OF THE GENERAL ASSEMBLY WITH LIMITED MEMBERSHIP MAY BE CLOSED TO MEMBER STATES NOT MEMBERS OF THE COMMITTEE OR SUB-COMMITTEE—RULE 62 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Note prepared at the request of a Working Group of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly

A legal opinion has been requested on the legality of having meetings of committees and sub-committees of the General Assembly closed to some Member States. The Office of Legal Affairs has also been asked to examine the drafting history of rule 62 of the rules of procedure of the General Assembly in order to ascertain the intention of the General Assembly in providing for private meetings.

At the outset, we should like to stress that as all Members of the United Nations are, under Article 9 of the Charter, members of the General Assembly and, under rule 102 of the rules of procedure, members of the Main Committees there can be no question of a meeting of the General Assembly itself or of a Main Committee from which a Member of the United Nations could be excluded. Participation on the basis of equality in all plenary meetings of the General Assembly, in all meetings of the Main Committees and in all meetings of other bodies whose membership includes all Members of the United Nations is one of the rights and privileges of membership which, subject, of course, to the provisions of Articles 5 and 19 of the Charter, cannot be curtailed.

The present question therefore relates solely to meetings of committees and sub-committees of limited membership.

Turning first to the drafting history and application of rule 62, it may be noted that the essential provisions of the rule were contained in the original draft rules of procedure prepared by the Executive Committee of the Preparatory Commission of the United Nations which were recommended by the Preparatory Commission for adoption as provisional rules of the General Assembly.[14] The text has remained unchanged except for a consequential change in the second sentence which was made at the second session of the Assembly when the provisional rules were reviewed. Originally this second sentence had read, "Meetings of other committees and *subsidiary organs* shall also be held in public unless the bodies concerned decides otherwise" (emphasis supplied). At the second session it was decided to deal with subsidiary organs separately in a special rule (now rule 162). The term "subsidiary organs" in rule 62 was changed to "sub-committees" as it is in the present text.[15] So far

[14] Document PC/EX/A/52/Part II, rule 71.

[15] See document A/C.6/182, p. 26.

as we have thus far been able to ascertain, there was no discussion of the meaning of the words "public" and "private" either at the time of the adoption of the provisional rules or at the time that the alteration of the text was made at the second session.

However, rules of procedure of principal organs of limited membership adopted at approximately the same time also contained provisions referring to private meetings in which the meaning is unmistakable. In particular we would refer to Chapter IX of the provisional rules of procedure of the Security Council in which it is expressly provided that the Security Council shall decide whether its confidential records may be made available to other Members of the United Nations.

While the drafting history gives us little help, practice which the International Court of Justice in its latest advisory opinion has again affirmed as an appropriate method of interpretation, would seem decisive in indicating that it was the intention that organs and committees of limited membership when meeting in private could exclude representatives and members of the United Nations who were not members of the organs concerned. The normal practice, consistently followed from 1946 to the present, has been that when a committee decides to meet in private only members of the Committee and essential Secretariat members are admitted. However, the Committee, as in the case of the Rationalization Committee itself, may decide to close the meeting only to the press and the public and to allow representatives of other Member States to attend.

Turning now to the constitutional issue, it is the opinion of the Office of Legal Affairs that there is nothing in the Charter which prevents the General Assembly from authorizing committees and sub-committees of limited membership to hold meetings in private from which representatives of other members of the United Nations are excluded. Such procedure, which has the support of twenty-five years of practice, does not violate the principle of sovereign equality. This principle assures to each Member of the United Nations that it be considered eligible for appointment to such committees. But a committee of limited membership necessarily requires some difference of status so far as the work of that particular committee is concerned. A member of a committee has all rights of participation including the right to vote. Accredited observers, if authorized by the General Assembly, may be given the right to participate in the discussions, or even to submit proposals but do not have the right to vote. When there is no provision for accredited observers, a Member of the United Nations present in the meeting room does not have the right to speak unless expressly invited by the committee to make a statement. The closing of a meeting of a committee of limited membership to non-members of the committee is therefore only one of many differences and can no more be considered a violation of the principle of sovereign equality than the establishment of organs of limited membership. With respect to such organs there are Charter provisions (Articles 32 and 69) providing for a right for the Members of the United Nations to participate in the meetings of the Security Council and the Economic and Social Council on matters specifically provided for in those articles. But these provisions do not preclude the holding of closed meetings.

In conclusion, it would appear to the Office of Legal Affairs that under rule 62 of the rules of procedure of the General Assembly and in accordance with 25 years of consistent practice, committees and sub-committees of limited membership may be closed to all but members of the committee and essential Secretariat members, and that there is no provision of the Charter in conflict with these rules and practices of the Assembly. Experience over the past 25 years would, it is believed, demonstrate that in exceptional circumstances the holding of such private meetings is essential for the performance of the functions of the committees concerned.

8 July 1971
