

M. Sub.

1/3/2/5

A33

[33]

25033

AVU 5-3

THE TECHNICAL COMMITTEE: CONSTITUTIONAL ISSUES

19 MAY 1993

SELF-DETERMINATION

A

1.

Some remarks on your approach to self-determination:

1.1 We are positive to see that the committee takes self-determination seriously and handles it as a key issue to constitutional planning and negotiation in South Africa.

1.2 It is of value that the committee explored the broader conceptual context of self-determination, so as to relate its political implications to social and other fields of life.

1.3 We are at one with the idea that this concept should be handled in terms of its concrete implications and not only on a theoretical basis.

2.

Nevertheless we note the following points:

2.1 We don't accept that political and communal self-determination be interpreted in the light of individual autonomy. Although individual autonomy and fundamental rights deriving from it constitute a key issue in our political development, and although self-determination should not be seen in opposition to individual autonomy, self-determination should not have a lower status than individual autonomy.

2.2 It would be totally unacceptable if a concrete and operational approach to self-determination be used as a smoke screen to nihilate the concept by nominally integrating it into a "holistic approach", while actually subjecting it to a form of radical individualism which is both outdated and a stumbling block to consensus.

19 MAY 1993

A

3.

460312

In the light of the foregoing, we submit the following for your scrutiny:

AFRIKANER-VOLKSUNIE

TEL (012) 322-3600/1 • FAKS (012) 322-3602

3.1 CODESA AND AFRIKANER SELF-DETERMINATION.000 An edited version of a report to Group 2 of CODESA by 36 Afrikaner Freedom

345

3.1 CODESA AND AFRIKANER SELF-DETERMINATION. An edited version of a report to Group 2 of CODESA by the Afrikaner Freedom Foundation.

This document was prepared for and submitted to CODESA shortly before it broke apart and is not sufficiently reflected in any of the CODESA reports being used by this Negotiation Council or its committees. Important issues are developed here and deserve your attention.

3.2 Raath, A.W.G. 1990. SELF-BESKIKKING EN SESESSIE. DIE SAAK VIR DIE AFRIKANERVOLK. Pretoria: AVSTIG. 61p.

This document was published by AVSTIG as an input to discussion on this matter and explored the right of self-determination, not only in terms of liberating colonised territories, but also in terms of the aspirations of ethnic minorities within independent states. Therefore we find it most relevant for the South African situation.

3.3 A statement at the forty-sixth session of the General Assembly of the United Nations, by Prince Hans Adam II von und zu Liechtenstein, Head of state of the Principality of Lichtenstein, as well as

A statement at the forty-seventh session of the General Assembly of the United Nations, by Mr Hans Brunhart, Head of Government and Minister of Foreign Affairs of the Principality of Lichtenstein.

3.4 Agenda item 97 (b) of the THIRD COMMITTEE of the forty-seventh session of the United Nations, on HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

4.

In terms of your own, very valid argument that the self-determination should function primarily on a concrete and operational level and not on an abstract conceptual level, we urge you to call upon specific people to give evidence before you and enter into discussion with you on their views on the realisation of self-determination in South Africa.

We would suggest at least the following people (more detail will be forwarded to you):

- 4.1 Prof Hercules Booysen, UNISA, (012) 46 3333
- 4.2 Prof Carel Boshoff, AVSTIG, (012) 804 3579/86 8698
- 4.3 Dr CJ Jooste, SABRA (Retired), (0271) 31937
- 4.4 Prof AWG Raath, UDVS, (051) 46 1388/ 401 2620

With respect

Chris de Jager

660313

19 MAY 1993

A

346

(A)

General Assembly

Discr.
LIMITEDA/C.3/47/L.66
1 December 1992

ORIGINAL: ENGLISH

Forty-seventh session
THIRD COMMITTEE
Agenda item 97 (b)HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING
ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Armenia, Australia, Austria, Belarus, Bulgaria, Canada, Cape Verde, Georgia, Czechoslovakia, Denmark, Estonia, Finland, Greece, Guatemala, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Morocco, Netherlands, Norway, Poland, Romania, Russian Federation, Rwanda, Slovenia, Sweden, Ukraine, United States of America and Uruguay: draft resolution
+ MALAWI, REP. OF KOREA, SRI LANKA, SAMOA, TAJIKISTAN EN MOLDAVIE
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The General Assembly,

Reaffirming that one of the main purposes of the United Nations, as proclaimed in the Charter of the United Nations, is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Noting the importance of the even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Welcoming the increased attention given by human rights treaty bodies to the non-discrimination and protection of minorities.

92-76588 4753Z (E) 021292

021292

/...

19 MAY 1993

A
347
660314

WC.3/47/L.66
English
page 2

Aware of the provisions of article 27 of the International Covenant on Civil and Political Rights 1/ concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the United Nations has an increasingly important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular through the relevant mechanisms of the Commission on Human Rights and the Subcommittee on Prevention of Discrimination and Protection of Minorities, in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the important achievements in this regard in regional, subregional and bilateral frameworks, which can provide a useful source of inspiration for future United Nations activities,

Stressing the need to ensure for all, without discrimination of any kind, full enjoyment and exercise of human rights and fundamental freedoms, and emphasizing the importance of the draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in that regard,

Recalling its resolution 46/115 of 17 December 1991, Commission on Human Rights resolution 1992/16 of 21 February 1992, 2/ by which the Commission approved the text of the draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, and Economic and Social Council resolution 1992/4 of 20 July 1992, by which the Council recommended it to the General Assembly for adoption and further action,

Having considered the note of the Secretary-General, 3/

1. Adopts the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the text of which is annexed to the present resolution;

2. Requests the Secretary-General to ensure the distribution of the Declaration as widely as possible and to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments;

1/ See resolution 2200 A (XXI), annex.

2/ Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A.

3/ A/47/501.

19 MAY 1993

A

348

A/C.3/47/L.56
English
Page 3

3. Invites United Nations agencies and organizations as well as intergovernmental and non-governmental organizations to intensify their efforts with a view to disseminating information on the Declaration and to promoting understanding thereof;

4. Invites the relevant organs and bodies of the United Nations, inter alia, treaty bodies and representatives of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities, to give due regard to the Declaration within their mandates;

5. Requests the Secretary-General to consider appropriate ways for the effective promotion of the Declaration and to make proposals thereon;

6. Requests the Secretary-General to report to the General Assembly at its forty-eighth session on the implementation of the present resolution under the item entitled "Human rights questions".

Annex

DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

19 MAY 1993

A

349

02.3/47/L.66
English
Page 4

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

19 MAY 1993

A

06.0317

350

A/C.3/47/L.66

English

Page 5

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

19 MAY 1993

A

3510318

CA/C.3/47/L.66
English
Page 6

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, including exchange of information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in this Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

19 MAY 1993

A

35219

A/C.3/47/L.66

English

Page 7

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in this Declaration, within their respective fields of competence.

19 MAY 1993

A

353 (2320)

Paper E

H.E. Mr. Hans Brunhart
Head of Government
and Minister for Foreign Affairs
of the Principality of Liechtenstein

Statement
at the forty-seventh session of the
General Assembly of the United Nations

New York, 23 September, 1992

Extract

19 MAY 1993

A

354

00321

1. Internal conflicts have become a special challenge to the community of States. Ethnic, social or religious disagreements often give rise to regional instability. We are aware of the fact that a number of the new States members of the United Nations, in particular, are in an extremely difficult economic and political situation.

2. Liechtenstein would like in this connection to express very particularly its sympathy with the victims of the conflict in Bosnia and Herzegovina. The war unleashed by the aggression of Serbia and Montenegro is causing great human suffering in that country. We are following with deep concern the continuing reports of massive and systematic violations of human rights and international humanitarian law for which all parties to the conflict are responsible. The killing of innocent human beings and the destruction of an irreplaceable cultural heritage must stop, and all parties must immediately make efforts to bring about a peaceful solution of their difficult problems. We support the declaration of principles issued on the occasion of the London Conference on 26 and 27 August 1992 and the framework established by the Conference participants within which a comprehensive political solution to the crisis is to be sought. We express our hope that the political will demonstrated in London will be transformed into specific actions and that the follow-up negotiations taking place in Geneva will soon yield positive results.

3. It is within that framework that I should like to refer to the initiative which the Head of State of the Principality of Liechtenstein, His Serene Highness Prince Hans-Adam II, introduced in His address to the forty-sixth session of the General Assembly.

4. On that occasion His Serene Highness referred to the need to find ways of promoting peaceful solutions to the many conflicts which have their roots in the tensions which exist between communities within States. His Serene Highness considered that such solutions should be sought within the framework of the principle of self-determination.

19 MAY 1993

A

355

000322

5. Liechtenstein is aware of the consideration already given within the United Nations - and indeed within other bodies - to the principle of self-determination. We acknowledge the great international effort devoted to this question in the past.

6. The right to self-determination as a principle is now universally accepted. I would recall not only that self-determination is one of the foundations of the Charter, but also that most States represented in this Assembly are already under certain specific legal obligations in this area by virtue of article 1 of each of the great human rights Covenants of 1966. There it is formally and with legally binding effect acknowledged that - and here I quote the text - "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" (end of quotation).

7. Despite all this, and with some notable exceptions, the practical and peaceful application of that principle has often been lacking. Tensions between distinctive communities within States, or between such communities and the State itself, persist in many parts of the world. Regrettably, they have in a number of instances led to outbreaks of serious violence. Apart from the human suffering which results, such tensions and violence often affect neighbouring States, and may have a more widespread impact on the maintenance of international peace generally. Much can be done to try to limit the suffering once the violence has started; but how much better it would be to go to the root of the problem - which is often to be found in the frustrations of distinctive communities when they are denied the legitimate expression of their communal identities and aspirations.

8. I am glad to say that His Serene Highness's speech last year attracted the interest of a number of delegations. During the past year we have undertaken extensive consultations, and we have benefited greatly from constructive suggestions which delegations have been kind enough to make. We are most grateful to all those Governments for the interest they have shown. We have also sought, and taken into account, some independent expert views.

19 MAY 1993
A

356
00323

9. It is against this background that Liechtenstein believes that the international community, through this Assembly, should take steps to make the right of self-determination more effective, and by doing so contribute to the avoidance of some future conflicts. It is our conviction that the time has now come for the international community, through the United Nations, to offer a realistic way forward, by establishing a practical framework through which communities can give expression to their distinctive qualities.

10. Such a practical framework would need to satisfy four main requirements:

First, there should be flexible and graduated forms of self-determination involving different levels of autonomy, taking account of the differing needs of differing communities and the States of which they form part; a subdivided community which allows its various parts to pursue the common goal in their own way can on occasion be a very good expression of the principle of self-determination;

Second, communities invoking the principle of self-determination should renounce resort to violence and commit themselves to pursue their aims through peaceful means only;

Third, assistance in the effective realization of the principle of self-determination should be available, through independent procedures;

and

Fourth, a proper balance must be maintained between self-determination and the territorial integrity of States.

11. Subject always to those requirements being met, we believe that the international community should recognize that self-determination is an inherent and inalienable attribute of all communities which possess a distinctive social and territorial identity. This involves the free choice by each community of its political, social, economic and cultural destiny in accordance with the best interests of its members.

19 MAY 1993

A

357

12. Self-determination, it must be stressed, is not necessarily - or even primarily - a matter of moving towards independent statehood. Indiscriminate independence would lead to the fragmentation of the international community, and would insufficiently respect the territorial integrity of States. In reality, however, full independence is, if only for purely practical reasons, the least likely outcome in most cases.

Respect for diversity can be adequately reflected in other ways. Self-determination can take various forms, as may be best suited to each community's and each State's particular circumstances.

13. It is important to retain the essential flexibility of the concept. But in all cases where there exists a community with a sufficient degree of distinctive identity, it would seem right that a certain basic level of autonomy should have to be acknowledged. I am referring to such very elementary matters as non-discrimination against the community or its members, their freedom to practise and enjoy their distinctive community characteristics, and their participation in appropriate ways in public affairs, particularly in matters directly affecting the community's interests. A commitment to acknowledge such a modest degree of autonomy for all communities that merit it should not, we believe, cause serious problems for any member of the United Nations.

14. More advanced levels of autonomy will be appropriate for communities whose particular circumstances demonstrate their fitness to enjoy them. But we do not think it would be realistic for the United Nations to seek to lay down detailed mandatory requirements for the self-determination of communities with a vast range of distinctive characteristics, settled within States whose own histories are so diverse. Anything beyond the sort of basic level of autonomy to which I have referred is probably best left to be developed on an optional basis, and case by case - the circumstances are so diverse that each is best left to be treated on its own merits.

15. Nevertheless there would, in our view, be some advantage in the United Nations indicating the kinds of further elements which might find a place in the more advanced levels of autonomy. These further elements of autonomy would progressively add to the degree to which the community conducts its own affairs,

19 MAY 1993

A

358 160325

but would only be available to a community with satisfactory experience - and even then, only if the State concerned is ready to accept the community's more advanced level of autonomy.

16. In this complex area we cannot assume that any general principle or procedures which might be agreed internationally will be applied without difficulty in particular cases. We should therefore also envisage that some procedures should be available to assist if any difficulties arise in the application of the principle of self-determination, and to assist with the peaceful resolution of any differences there might be.

17. A number of delegations with which we have discussed our ideas in general terms suggested that it would be advantageous for the matter - which, as well as being of great political importance, is also of considerable technical complexity - to be the subject of some further examination by a group of experts, so as to facilitate the progress which may eventually be made in this Assembly.

18. We have accordingly concluded that the most appropriate course will be for the Government of Liechtenstein to invite each Government represented in this Assembly - and that includes those here as observers - to nominate an independent expert to attend an informal Meeting of Experts in Liechtenstein next March. We hope that the experts attending this Meeting will be able to assist us in further developing the ideas advanced initially by His Serene Highness at the forty-sixth session of this Assembly. We envisage that the experts nominated to attend will do so in their personal capacities, since we believe that, by adopting procedures which avoid committing Governments, we are more likely to have a constructive and expert discussion. Invitations to nominate experts to attend this Meeting will be issued during the course of the present session.

19. In the light of the views expressed at the Meeting of Experts, the Government of Liechtenstein will consider how best to return to this Assembly, perhaps at its next session, in 1993, with proposals for carrying further the initiative introduced last year by His Serene Highness.

19 MAY 1993

A

359 326

20. As the international community makes progress, however haltingly, in preventing the outbreak of violent conflicts between States, it becomes all the more important that we should together seek to find ways of avoiding the no less inhuman consequences of civil wars between communities within a State. In informing you of the lines along which our thinking on this important and sensitive matter is developing, I hope that I may have demonstrated the depth of our concern that some way should be found of controlling one major source of much violence and human suffering in today's world.

19 MAY 1993

A

360 827

Paper D

**His Serene Highness
Prince Hans-Adam II von und zu Liechtenstein**

**Head of State
of the
Principality of Liechtenstein**

**Statement
at the forty-sixth session of the
General Assembly of the United Nations**

26 September 1991

Extract

19 MAY 1993

A

66.0328

361

1. In the recent past we have been able to witness rapid and almost revolutionary political changes in the world. Tensions between East and West are greatly reduced. Europe is not any more divided. Solutions to some regional conflicts are as close as never before. These developments form the background for the new challenges that the world community is facing.

2. The role of the United Nations has changed, the Organization has entered a new phase; profiting from the absence of great power confrontation, it acts more efficiently and concentrates on the cause of peace and security.

3. Small States have a special need for protection and security. The Principality of Liechtenstein, although it is fortunately a prosperous and secure country, surrounded by two permanently neutral neighbours, feels that this issue is of direct relevance. Respect for international law is our only protection. For these reasons we feel deeply committed to the principles of sovereign equality, political independence and territorial integrity of States. Although we were not a member country of this organization in 1989, we fully support resolution 44/21, urging Member States inter alia to settle disputes peacefully, adhere to the principles of equal rights and self-determination of peoples and to respect human rights and fundamental freedoms.

4. Unfortunately, we have seen again and again in the history of mankind brutal aggressions of one country against another. The aggression of Iraq against its small neighbour Kuwait was just the last example of a long list. The peace-loving countries of this world have to be grateful to the United Nations and to the Member States which took part in the military action against Iraq that finally resulted in ending the occupation and preventing the permanent annexation of Kuwait. International law served as the umbrella for the international response to the Gulf crisis and thus constitutes the most recent proof that the respect for international law is a small country's only protection. Let us all hope that this crisis was a turning point in human history. For as long as the United Nations reacts as it did during the Gulf crisis, such aggressions will cease to become attractive instruments for even the most power-hungry dictators.

19 MAY 1993

A

56.0329

362

5. Unfortunately, we all know that even if we succeed in preventing all aggressions, peace and happiness will not come easily to the world. Some of the most cruel wars in the past decades have been civil wars. Politicians and historians can give us many reasons why civil wars happen: different cultures, languages or religions having difficulties to coexist in a single State, oppressed minorities, or simply political differences which cannot be solved peacefully.

6. A solution for some of these problems can be found internally if a State respects human rights and fundamental freedoms and has democratic institutions that work. But history shows us that even then civil wars can break out. Human rights can also be violated in countries with a democratic tradition. Democratic institutions can break down. There are situations where peaceful coexistence between different groups inside a single State does not seem to be possible - whatever the reasons. Should we in those cases not endeavour to find other solutions in accordance with the principle of self-determination, rather than risking cruel and destructive civil wars?

7. I am aware that the United Nations has been for good reasons very prudent concerning the principle of self-determination. To encourage exercising the right to self-determination might lead to even more civil wars and to the disintegration of member States. Non-interference in the internal affairs of Member States has certainly been a wise policy to follow. Nevertheless, we have to accept the fact that the borders of nearly all Member States, including my own country, have not been drawn according to the principle of self-determination. They are usually the product of colonial expansion, international treaties or war, and very seldom have people been asked where they want to belong to. But even if they had been asked, a new generation might have another opinion; circumstances can change and expectations can remain unfulfilled.

8. A majority of Member States certainly supports self-determination in theory. How this principle is to be applied in practice has however, in my opinion, not been studied enough. Usually the discussion starts over a specific case when strong emotions are already involved. Would it not be better to at least try to find a minimum consensus between Member States on some guiding principles, when efforts are being made to implement the principles of self-determination? To be acceptable to a largest possible number of Member States,

19 MAY 1993

A
363
66330

- 4 -

such guidelines or rules of conduct should foresee a careful evolution, which could start from a low level to higher levels of autonomy before complete independence can be attained. Independence is, however, not always the best solution: It can be a complicated and sometimes traumatic process.

9. I wish to inform you of my intention to instruct experts to prepare a preliminary study on this question, the outcome of which would be submitted in due course to the General Assembly if this is considered desirable. A convention modelled after the European Convention on Human Rights could eventually be the product of these efforts. I would like to raise a few points and draw a few lines in order to give you an overall idea of the possible outline of such an instrument.

10. A central question will be to define what entity can be the beneficiary of the right to self-determination. Several methods have been discussed in the past. It might be sufficient to establish a minimum size of the area and population involved. Setting this minimum size very low would have two important advantages:

1. Minorities who ask for self-determination would consequently have to grant the same rights to their own minorities. Experience shows that they are at times unwilling to do so which can be the cause for new problems.

2. A low minimum size would in my opinion lead to a decentralization rather than to a break-up of the present States, because for small groups and areas independence will not always be the best solution.

11. For a modern State decentralization has political and economical advantages. Decentralization is certainly one of the key elements for the prosperity and political stability of Switzerland, a country without natural resources and a population with four languages, different religions and many political parties.

12. A convention on self-determination could foresee several degrees of autonomy before independence were granted to a certain region, thus giving the central State and the region the time to adapt to the new situation with the likely

19 MAY 1993

^A
364 00331

outcome that the people will in most instances prefer autonomy to independence. Three degrees of autonomy could be envisaged:

13. The first degree could involve the election of representatives for the new autonomous region and consequently the administration by those elected representatives of the funds which are allocated by the central government. Some additional rights could be given in the fields of culture and education.

14. The next step could involve some autonomy in taxation. Direct taxes would probably better be raised by the regions whereas indirect taxation, import duties and the like could remain with the central government. A financial compensation plan would have to be worked out at this stage, taking into account the income and the administrative functions of the region that may for instance already include the police and the lower courts.

15. The third degree of autonomy could involve some legislative power. Examples can already be studied in some of the decentralized States. At this stage of autonomy most administrative functions of the central State could be turned over to the region with the exception of defence and foreign affairs. Even regional military units could be set up as long as they are integrated into the overall defence plan.

16. The next step of this process - in the case it is desired - would be full independence.

17. Those States which accept the general terms of a possible convention on self-determination could envisage setting up an international commission or court comparable to the European Commission and Court for Human Rights to which all parties concerned could appeal in case of conflicts. Such an approach would offer the possibility to observe how these general guidelines work in reality and to adjust them if necessary. Other States might then be willing to sign the convention too, and perhaps one day those guidelines on self-determination could become generally accepted international law, as other conventions have become.

19 MAY 1993

A
365 000332

18. If we look at human history it seems that humanity does not have many alternatives. In the past and in the future new States have been and will be born, they disappear or their borders change. If we look at longer periods of time we see that States have life cycles similar to the human beings who created them. The life cycle of a State might last for many generations but hardly any member of the State of the United Nations has existed in its present borders for longer than ten generations. It could be dangerous if one tried to put a hold on these cycles, which have been present throughout human history. To freeze human evolution has in the past often been a futile undertaking and has probably brought more violence than if such a process was controlled peacefully.

19. Considering the advances in the field of technology, civil wars will become more and more destructive, not only for those directly involved but also for neighbouring States and for our whole environment. The possible destruction of a large nuclear power plant in a civil war is a frightening example. Would it not be much safer to replace the power of weapons by the power of voting even if it means that new States may be born?

19 MAY 1966

A

366