

THE PARTICIPATION OF MICROSTATES IN INTERNATIONAL AFFAIRS

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This is an informal report on some research in progress. For the past nine months I have been not only a professor concerned with the broad problem of how the international community should deal with the bits and pieces left over from the colonial system but also legal adviser to the provisional government of one of those small bits or pieces, the island of Anguilla. For almost a year this Caribbean island with a total population of six thousand has been governing itself.

For most of the last nine months I have been looking at the problem of an unrecognized microstate from the point of view of that state. What are its problems and what can its people do to make sense out of them? Today, I look at the problem from the point of view of the international community. How should international lawyers and the United Nations approach the problem of small places, particularly islands, whose future international status remains in doubt?

First a few words about that one microstate upon which so much of my judgment is based. Anguilla is a dry island, with no telephones, no public water, no public electricity, and less than three miles of paved road. It is 16 miles long and 3 miles wide. It exports fish, and salt which is evaporated in salt ponds. A large part of the population lives on remittances which are sent back by Anguillians who have gone to other islands, to England or the States to find jobs. The population is English-speaking, mostly black—the descendants of slaves brought to the island years ago. There are two or three university graduates on the island. Until this last year the islanders had little or no experience with committees, meetings, budgets and administration.

For the time being, Anguilla's international status remains unresolved. Britain attempted to give Anguilla independence as part of a unitary state dominated by St. Kitts and Nevis, two islands that are about 70 miles to the south. This was to be an associated state for which Britain exercised control over defense and external affairs so long as the state wished them to. For Anguilla, this solution did not mean self-government. A warden responsible to Britain was replaced with a warden responsible to St. Kitts. The solution was physically rejected by the people of the island. Last spring both the warden and the police were sent off the island. Since the end of May, Anguilla has been governing itself, although both Britain and St. Kitts still regard the island as technically part of the associated state of St. Kitts-Nevis-Anguilla.

During the current year we have worked out an interim arrangement. A British Civil Servant is on Anguilla by agreement of all the parties. In the view of Anguilla he is there as an adviser; in the view of St. Kitts he is there to exercise administrative authority over the island.

For the purpose of stimulating discussion, let me advance baldly some of the conclusions I have tentatively reached.

The classic theory of states and colonies does not fit small places

Participation in the international community is based upon the state system. In classic theory all territory in the world was divided up among states, or it was uncivilized territory which could be acquired by a state. In substance, everything was either a colony or part of a state.

During the last generation, decolonization has been accepted as a universal goal. Colonies, upon coming free, were expected to become states. For big places like India and Indonesia the theory worked. Upon achieving independence each of them did become a typical nation-state with a budget, tax system, police, army, ambassadors, legislature, court system and the political paraphernalia with which we are familiar. But decolonization has now reached "the bottom of the barrel." Small places, upon becoming free, do not resemble the classic nation-state. Islands like Samoa, Nauru and Anguilla, even if they govern themselves, will be quite unlike larger nation-states.

Theory should be adapted to facts, rather than vice versa

There is inevitably an attempt on the part of lawyers and others who look at the microstate problem to adopt the solution of Procrustes, that figure in Greek Mythology whose name means "the stretcher." According to legend, when a visitor who was too short for Procrustes' bed sought his hospitality, "he was placed on the long bed and his limbs pulled out until he died from exhaustion." (22 Enc. Brit. 419, 11th ed.)

We tend to insist that a small entity fit the bed that we have constructed. If it is not big enough to be a traditional state, "a viable international unit," then it should go back where it came from. The one other option that is usually held out is a federation. With little regard to how the individual units may feel about federation, outsiders often attempt to tie several islands together and call them one state. Unless a federation is a genuine response to local political feeling, being forced to fill Procrustes' bed by doubling up is hardly better than being stretched.

No need for either/or solutions

As we consider the proper rôles which small places may play in the international community we should recognize the advantages of flexibility of concepts. There is no *a priori* need to insist that a given place be either independent or not independent, that it be either sovereign or not sovereign.

Although the differences between children and adults are significant, lawyers know that pursuit of a general definitional line dividing children from adults is futile if not positively harmful. A teenager fits the legal system only when we do *not* ask the big question, "Is he an adult?" but rather consider the particular rights and obligations involved, be it driving, drinking, voting, paying full fare, getting married or getting drafted.

Similarly, we ourselves should learn and we should teach others that independence and political freedom are too important to be confined by sharp categories. Self-determination is not a single choice to be made on a single day. It is the right of a group to adapt their political position in a complicated world to reflect changing capabilities and changing opportunities.

*To decide upon the participation of microstates in outside affairs,
we should first consider the participation of outsiders
in microstate affairs*

It is natural for the United Nations and for international lawyers to worry about the rôle which microstates will play in international organizations. But the international status of microstates should start with the problems of microstates, not with the problems of the United Nations. If we are not going to stretch microstates to fit a Procrustean bed we should measure up their needs and design something to fit.

For a small place, as for a big one, most problems are internal. I am giving away no secret to reveal that of all the questions which faced Anguillians during this past year, the question of the kind of vote, if any, it ought to have in international organizations was not to them the most important.

Although most of the problems facing any state relate to what is going to happen within the state, outsiders have far more impact in a small place than they do in a large one. Small places cannot be left alone. The paradox of their existence is that in order to be left alone, outsiders will have to help. It has taken, and will take, international concern to free places from a stifling colonialism. It has taken and will take international concern to keep them free. The premise of self-determination is that a people should be allowed to determine their own future. Yet if a small group of people is to have that right, outsiders will necessarily be involved in establishing it, in making it meaningful, and in maintaining it.

What kind of assistance and relationships with the outside world does a small place need? After we see what foreign governments and international institutions can do for it we can consider what contribution it can make to international affairs. Looking both ways will give us a sense of the kind of participation in international affairs we should expect of a microstate.

A small place needs services

Reading a list of small self-governing and non-self-governing states and territories whose future remains unclear suggests that what is appropriate for one will not be appropriate for another; we should expect a wide variety of arrangements. Yet all small places will want to call on outsiders for assistance and services of one kind if not another. Let me just mention a few of the problems which are live issues this month on Anguilla to illustrate the needs that are created when the modern world impinges upon one small island:

currency, coinage and exchange control
 medical services and the licensing of doctors
 technical training and higher education
 a judicial system, including attachments and appeals
 regulation of automobile insurance
 regulation of aircraft
 selection and control of foreign investors
 land use planning; control of land development
 military defense
 investigation of crime
 licensing of boats and boat safety
 regulation of mortgages and banking
 passport and consular services.

The price of freedom should not be too high. It should not require a small place to do without such services or to provide them on its own. Few small places can afford a good university, a medical school or enough lawyers to have an appellate court. Most of these services will be best provided through some special relationship with one or more larger states.

A small state will almost necessarily choose to have a close relationship with one particular state, perhaps the former colonial power. So long as this relationship is knowingly and voluntarily entered into, no matter how extensive it may be, little purpose is served by charging that the state is not "sovereign." A married man is not so "free" as a bachelor. But for states as for people freedom includes the discretion to enter into arrangements which impinge upon future choices.

A microstate needs advice

A small place needs advice, and needs advice about where and how to get advice. Advice on technical problems is important but not controversial. Everybody agrees on technical assistance. But small places also need advice about fundamental political problems. They need advice about the governments with which they ought to establish or maintain special relationships. They need competent and impartial advice about their constitutional arrangements and about changes in those arrangements which might better suit their future needs in the light of changing circumstances.

A microstate needs status

If freedom is the justification of self-determination, a small place should feel free. There should be indicia of freedom. The people should not see themselves as being condemned in perpetuity to some form of subordination, nor as waiting for a future. They should feel that they have arrived, that they are now "there." Although future changes in their arrangements may be expected, the line has been crossed. Such a status of freedom needs to be demonstrated by something. I suggest it be direct access to the United Nations.

In the light of these needs, it seems clear to me that the United Nations should have an office to provide small places with the kind of advice and services they need. It could be a kind of clearing house with initiative. Such an office should not wait to be asked the right questions, but might take on the affirmative responsibility to see that the best technical advice and services available were made available to the small states and territories within its jurisdiction.

The easy part, as I have suggested, is providing assistance of a technical or economic nature. This is done now through the specialized agencies both for independent states and for places that are not independent. It could be improved, I surmise, if small places could look to a single office which would know about both national and international programs for which they might qualify.

The more difficult problem relates to political and legal advice. A small state needs advice about its constitution and about its relationships with larger states. For the small state that is "wholly independent" one can readily conceive of a U.N. advisory service which included such legal and political advice. It might provide some advice on its own and refer other matters to independent counsel or consultants.

But what about the small place that has not crossed the classic line into "independence"? It is for just such a small place that political and legal advice is most important. A small place that is toying with ideas of greater autonomy is the very one most in need of political help. It needs impartial and competent assistance in considering the options open to it and in devising new options.

Today, any small place that is unrecognized is wholly dependent for international political advice on the very government whose relationship with the small place is in question. Outsiders, and particularly the United Nations, are unwelcome. It is said that to invite international participation at this stage would encourage fragmentation. The contrary, I suggest, may be true, at least if the international participation is competent and responsible.

If the people of an island have no way to bring international consideration to their problems except to secede, they are likely to secede. If, however, it is possible for them to get international consideration and advice without complete independence, there is no unnecessary pressure for secession. And if that international advice is motivated not by ideological bias either for continued subordination or for "independence" but by common sense and good judgment there should be less smashing of valuable relationships, not more.

For such a scheme to work, the rôle of a U.N. adviser to a potential microstate would have to be quite different from the rôle heretofore played by the U.N.'s Special Committee of 24. That committee has appeared to act as an international lobby for absolute independence regardless of the consequences. Independence has become an ideology which has been pursued as an end in itself. No country is going to welcome into the delicate consideration of difficult political questions an adviser who always gives

the same advice, an expert who knows the answer before he knows the facts. One does not welcome medical advice from a surgeon who always recommends major surgery.

The U.N. would have to change quite radically its orientation toward small places. Before the United States would welcome U.N. advice to Puerto Rico, to Guam, or to the Virgin Islands, before France would welcome U.N. advice to Guadeloupe or Tahiti, the advice would have to be based, without political preconceptions, upon the genuine interests of the places concerned.

If this could be accomplished, then it should be possible to open up U.N. advice, political and otherwise, to small places without regard to their independence. The U.N. facility might be made available to all small self-governing and non-self-governing states and territories, without ever having to decide in which category a particular place fell. A small place could have a special relationship with a major state and also have direct access to the United Nations.

The secession problem cannot, however, be quite so easily avoided. If Anguilla can have direct access to the United Nations, will the same be true for Biafra, for the Isle of Man, and for Nantucket? For the time being, my partial answer to this problem would be to define, perhaps to list, the small territories which were dependent as of 1946, as those which would be eligible for continuing political advice on their status and international relationships.

What constitutes an appropriate unit for self-determination is both an international question and topic of explosive domestic political consequences. In time the U.N. will have to develop procedures for coping with such questions. One part of the answer to this problem lies in opening some procedural door at the United Nations to groups without regard to their official status. If there is a door at the U.N. which is as open to a black nationalist group seeking independence for Alabama as doors are now open at the U.N. to non-governmental organizations interested in conservation or science, no shade of "recognition" need follow from the fact of access to the United Nations.

But this problem of secession and self-determination is far broader than microstates and cannot be covered here.

The other side of the coin

Finally, we reach the question of the reverse flow, the flow of ideas and influence *from* the microstates rather than *to* them. This is the question to which most of those who have looked at the microstate problem have directed their primary attention. There has been substantial discussion of the voting rights or observer privileges that could be given to small places. It has been suggested that if a microstate is too small to deserve a vote, perhaps a group of small states could combine together and have a single vote among them.

Again, we should expect both flexibility and a variety of arrangements.

I do not have any particular plan to propose, but the general outline seems clear.

1. There will be small states that are not members of the United Nations. Before trying to draw an appropriate line between members and non-members we should develop and consider the possibilities that are open to non-members.

2. A non-member microstate will often have a special relationship with a member of the United Nations who, on most occasions, can see to it that any intellectual or other contribution from the microstate is brought to bear within the United Nations or within other international organizations.

3. Outside the United Nations, the framework of normal diplomacy, it will also be possible on most occasions to have a large state handle the foreign affairs of a microstate. Every microstate can be expected to call on some larger state to handle at least some of its foreign transactions.

4. Both within international organizations and in international affairs generally, a microstate should be able to raise its own voice on matters where it wants to be heard, despite the fact that a larger state is handling most of its international affairs. Again, we should not insist on the either/or solution. The line between internal and external affairs is, at best, a fuzzy one. A microstate should not be required to choose between having another state handle all of its external affairs or none. Anguilla, for example, might like Britain to continue to handle most of its external affairs but be free to deal directly with its Caribbean neighbors.

5. At the United Nations then, there should be some place, some office, where an official or a letter from a microstate would be received. It should not be difficult to provide the microstate non-member with enough facilities to enable it to contribute, to the extent of its abilities, to the work of the United Nations. A vote in the General Assembly is not crucial except as a status symbol, and we should be able to find alternative indicia of freedom. A microstate should be able to obtain U.N. documents on matters of interest to them. There should be a procedure for receiving and circulating written comments or other communications from a microstate. One of the U.N. Committees might appropriately hear microstates, much the way petitioners are now heard by the Fourth Committee, on any matter of concern to them.

Along such lines a microstate could participate actively and easily in the international community. And such direct access to the United Nations would go far to prove for others, what Anguillians assert: "Never too small to be free."

The CHAIRMAN thanked Professor Fisher and called on the next speaker, Mr. Moshen S. Esfandiary of the Permanent Mission of Iran to the United Nations.

COMMENTS BY MOSHEN S. ESFANDIARY

Permanent Mission of Iran to the United Nations

Mr. Rapoport's comprehensive and thorough examination has been ably

supplemented by Professor Fisher's fresh view from outside the U.N. of the problem of ministates' participation in international affairs. Let me say at the outset that I fully agree with both of these distinguished speakers that the United Nations should play a special rôle in the disposition of the problem of ministates' participation in international affairs.

The U.N. rôle with respect to a dependent territory, needless to say, is well defined, whereas after decolonization, it is not so clear. Both the Charter as well as the practice of the U.N. as expressed notably in the Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514(XV) provide the framework for U.N. authority and powers before decolonization. However, neither Article 4 of the Charter nor the practice of the United Nations offers such clear and helpful guidelines on what the U.N. could or should do in the case of a territory which emerges as a sovereign entity.

To be effective, the U.N. rôle must embody not only the views of the majority, which wishes to enforce established precepts and principles, but also the views of the minority which exercises effective control over these territories but which, at times, is inclined to resist or overlook some of the basic principles.

The approach to the problem, therefore, must be both flexible and open-minded, provided that it leads to the attainment of two principal objectives: (a) decolonization; (b) safeguarding the sovereign rights and freedoms of the miniterritories after decolonization.

The problem of ministates should be viewed at all stages in the context of these two main objectives. Both the question of decolonization of miniterritories and that of admission of ministates to the United Nations should be taken up as a single problem. I fully appreciate the approach suggested by the Secretary-General and endorsed here by the two distinguished speakers that, "a distinction be made between the right to independence and the question of full membership in the United Nations." However, to treat the problems of decolonization and membership as one question offers certain advantages. Of these, the main would be the formulation of an arrangement or arrangements by which both the objectives of decolonization and participation in international affairs as free entities may be ensured. I shall comment on the two aspects of the problem separately.

1. THE PROBLEM OF DECOLONIZATION

Let me first consider the problem of decolonization of miniterritories. What is meant by decolonization? How is it brought about?

Decolonization as understood by the majority of members means one thing and as understood by the minority, another. Majority view is normally reflected in the decisions of the U.N. which Mr. Rapoport appraised quite accurately. The minority view, even though it has not in the past been reflected in the decisions of the U.N., should be borne in mind because of its importance for practical considerations, especially in the case of so-called remnants of colonialism.

A. Decolonization within the meaning of U.N. actions:

Mr. Rapoport has already shown that despite the impression given that independence was the only way out of colonialism, this was not exactly the case. He has further qualified this statement by saying that "it is correct to state that from a U.N. point of view the right to self-determination is inalienable and that the possibility of opting for independence is pre-eminent." I should like to add that with the decrease in the number of large colonial areas, the Assembly has lately been able to devote greater attention to the problem of some of the miniterritories. On the basis of action taken with regard to this group of territories rather than on major colonial areas, the U.N. has shown that it is first and foremost interested in bringing about genuine decolonization, in a much broader and larger sense than independence.

In cases in which the end of decolonization would not be served by independence, the U.N. has deliberately refrained from recommending it. Furthermore, whenever the U.N. has found that the exercise of the right of self-determination might in fact impede the process of decolonization, it has deliberately dropped self-determination in favor of some other procedure for decolonization. Thus, in the case of territories which were separated from the mainland of an independent state by forces of colonialism, the U.N. has consistently proposed instead of self-determination negotiation between the Administering Powers and the state or states involved, with a view to bringing about decolonization of a territory.

The General Assembly by its Resolution 2065 of 16 December 1965, after taking note of a dispute concerning sovereignty over the territory of the Falkland Islands (or Malvinas) between the U.K. and Argentina, recommended that both sides proceed to negotiations with a view to finding a peaceful solution to the problem. In 1966 the Assembly adopted a consensus "urging both parties to continue with the negotiations so as to find a peaceful solution to the problem as soon as possible, keeping the Special Committee and the General Assembly duly informed about the developments of the negotiations on this colonial situation, the elimination of which is of interest to the U.N. within the context of General Assembly Resolution 1514(XV)."

In the case of British Honduras, the Special Committee and Sub-Committee III have year after year refrained from taking any action in order to permit the negotiations between the United Kingdom and Guatemala to reach a satisfactory conclusion.

In the case of Ifni and Spanish Sahara, the General Assembly by its Resolution 2072(XX) of 15 December 1965 requested the Government of Spain "to take immediately all necessary measures for the liberation of the territories of Ifni and Spanish Sahara from colonial domination and, to this end, to enter into negotiations on the problems relating to sovereignty presented by these two Territories." Subsequent to this resolution, the Assembly made a distinction between Ifni and Spanish Sahara by recommending different procedures for the decolonization of each territory. In the case of Ifni, it continued to follow the same general line, recommending by its

Resolution 2354(XXII) of 19 December 1967, that the Administering Power "take immediately the necessary steps to accelerate the decolonization of Ifni and to determine with the Government of Morocco, bearing in mind the aspirations of the indigenous population, the procedures for the transfer of powers in accordance with the provisions of General Assembly Resolution 1514(XV)."

With regard to Spanish Sahara, which presents a more complicated case since more than one country was involved in a sovereignty dispute, the Assembly by the same Resolution invited "the Administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under U.N. auspices with a view to enabling the indigenous population of the territory to exercise freely its right to self-determination."

It may be noted that although in the case of Spanish Sahara the exercise of the right of self-determination was deemed to be the appropriate method for decolonization, consultation with certain governments was also considered a necessary prerequisite. Moreover, it is noteworthy to mention that in the majority of resolutions on decolonization, the inalienable right of the people of a territory to both independence and self-determination is reaffirmed. In the case of Spanish Sahara, however, reference to independence has been omitted. Thus operative paragraph 1 of the Assembly Resolution reads as follows: "reaffirms the inalienable right of the people of Spanish Sahara to self-determination in accordance with General Assembly Resolution 1514(XV)."

Finally, but most important of all, is the question of Gibraltar. The first action taken on the question of Gibraltar was the consensus reached by the Special Committee of 24 in October 1964. Under this consensus the Committee, having noted that a "dispute" existed, between the United Kingdom and Spain regarding the status and situation of the Territory of Gibraltar, invited the two powers to begin talks without delay in conformity with the provisions of Assembly Resolution 1514(XV). Acting on the basis of this consensus, the General Assembly in 1965 by its Resolution 2070(XX) invited the two governments to begin without delay the talks envisaged under that consensus. The Special Committee on 17th November 1966 adopted a resolution

- (a) calling on the two parties to refrain from any acts which would hamper the success of the negotiations; and
- (b) regretting the delay in the implementation of General Assembly Resolution 1514(XV) with respect to the Territory.

The concept of decolonization through negotiations with respect to small territories of this kind was further strengthened by Assembly Resolution 2231(XXI) of 20 December 1966 whereby the Assembly on the one hand expressed its regrets about "the delay in the process of decolonization and in the implementation of Resolution 1514(XV) with regard to Gibraltar" and, on the other hand, called upon "the two parties to continue their

negotiations taking into account the interests of the people of the Territory.” It went on to “ask the Administering Power to expedite, without any hindrance and in consultation with the Government of Spain, the decolonization of Gibraltar, and to report 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 as soon as possible, and in any case before the twenty-second session of the General Assembly.” The phrase “taking into account the interest of the people of the Territory” was included in this paragraph as a result of long and informal discussions and negotiations in the 4th Committee, of which I was the Rapporteur at the time. I can recall that while one group of countries insisted on the inclusion of a reference to the exercise of the rights of self-determination, another insisted that no reference whatever was necessary. When the final compromise was worked out, both sides, namely the two parties involved, interpreted it in a different way. The United Kingdom maintained that this formula was designed to enable the people of Gibraltar to exercise their right of self-determination. Spain, on the other hand, held that the Assembly Resolution called not for self-determination but for negotiations which would take into account the interests but not necessarily the wishes of the population. The Spanish view found general support among the membership of the United Nations when the United Kingdom tried to hold a referendum on the basis of this particular phrase. The Special Committee of 24, by its Resolution of September 1967 just before the holding of the referendum, declared that the “holding by the Administrating Power of the envisaged referendum would contradict the provisions of Resolution 2231(XXI).” It went on to reaffirm the process of negotiations by inviting the two Governments “to resume without delay the negotiations . . . with a view to putting an end to the colonial situation in Gibraltar and to safeguarding the interests of the population upon the termination of that colonial situation.” The General Assembly at its 22nd Session put its seal of approval to the decision of the Committee of 24 and solemnly declared

the holding of the referendum of 10 September 1967 by the Administering Power to be a contravention of the provisions of General Assembly Resolution 2231(XXI) and of those of the resolution adopted on 1st September 1967 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.

It may be asked why the U.N. in this particular case rejected self-determination as a procedure for decolonization when it had itself established this procedure as a primary course for decolonization and an inalienable right of every dependent people? Part of the answer may be found in the fact that the U.N. has taken into account that the people of Gibraltar have been beneficiaries of colonialism rather than victims of it. The present inhabitants of the Rock have been brought into this territory in order to serve the needs of the administering power. The present population, having through the years gradually replaced the original

Spanish population of the territory and having completely changed the cultural and social makeup of the society of Gibraltar to serve their own particular needs, is not much interested in the idea of decolonization. If left alone, they would probably wish to retain their present status. Under the winds of change and subject to pressures for decolonization, they have expressed their desire to opt for associated statehood with the United Kingdom.

I may have taxed your patience in citing these cases. But, I think it is important to throw further light on the meaning of decolonization. As can be seen, in the eyes of the U.N., decolonization has a much broader meaning than independence or the exercise of the right of self-determination. In fact, contrary to the impression which some critics of the Committee of 24 might have, this Committee has not followed a dogmatic and rigid line of policy with regard to such highly regarded precepts as independence and self-determination. Its primary concern has been decolonization and, on this, it has taken an uncompromising stand.

On the basis of the practice of the United Nations, therefore, one could conclude that decolonization has come to mean *effective transfer of powers*. As a rule, and especially in the case of relatively larger colonial territories, the reins of power are to be transferred to the people concerned in the form of independence. Again as a rule, self-determination is envisaged to enable the people who have suffered from colonialism to exercise their sovereign rights with respect not only to the form of government but more particularly to the future status they might wish to have. As Mr. Rapoport has shown, there have been times when the peoples concerned have opted for integration and federative arrangements. And finally there is sufficient evidence to support the view that the U.N. has also deliberately refrained from endorsing independence or self-determination as the appropriate form or manner of decolonization in all cases involving a dispute over sovereignty.

B. Decolonization as seen by the Administering Powers

Let me now turn to the meaning attached to decolonization by the Administering Powers. I am deliberately leaving out South Africa and Portugal as these two countries have not so far accepted the idea of decolonization even in principle. France prefers going it alone and has been ignoring the U.N. in this field, although partly because of the pressures mounted by the U.N. about French Somaliland it did respond by holding a referendum in that territory but without U.N. participation.

The case of Spain is more complicated. It has more or less accepted, at least in principle, the U.N. resolutions on its territories. That leaves only the U. S. and the U.K. both of which are well represented here, and are the most important insofar as the future of miniterritories are concerned. Generally speaking, I believe they have similar views about decolonization, although some fine differences of approach may be detected between them, especially with regard to small territories. Not enough evidence exists, however, to define these differences in detail. Since the

U.K. has taken the lead in bringing about what they consider to be decolonization, I shall confine my remarks, on the basis of available evidence, to the position of the United Kingdom.

Needless to say, the U.K., as the administrator of the largest colonial empire, has done much (perhaps even more than any other power) to help pave the way for the emancipation of the peoples under its colonial rule. In the case of virtually all the larger territories, with the exception of Southern Rhodesia, independence has been the rule. In the case of mini-territories, however, a new approach seems to be emerging. Last year, the United Kingdom informed the Committee of 24 that the six Caribbean Islands of Antigua, Dominica, Granada, St. Kitts-Nevis-Anguilla, St. Lucia, and St. Vincent were to assume a new status as States in Association with the United Kingdom.

In presenting the details of the new arrangements, the U.K. representative tried to establish the following three points:

- (a) the six territories would enjoy a full measure of self-government;
- (b) they would enter into a strictly voluntary relationship with the U.K., being entirely free to opt for independence in accordance with agreed constitutional processes;
- (c) the new arrangements had been worked out in full consultation with the people of the particular territories concerned.

He concluded from this that the U.K. had fulfilled its obligations under Article 73e of the Charter, and other relevant resolutions of the Assembly. The new status represented decolonization of the six territories in the eyes of the United Kingdom. Moreover, Lord Caradon, speaking on behalf of his government in the Committee, stated that "it was not just the future of the Caribbean Islands that was at stake; the question was how best the interests of peoples in many other small territories could be served. . . . The problem to which the Special Committee must now direct its attention was that of countries too small, too poor or too isolated to stand alone as independent states." (Doc. A/6700/Add.14.)

Despite the fact that, under the new arrangements, defense and foreign matters were to be left in the hands of the U.K. and thus decolonization, in the sense of transfer of powers, was to be effected only partially, the Committee of 24 was willing to go a long way to meet the views of the U.K. The most critical point at issue between the Committee and the U.K., which ultimately led to the U.K.'s decision not to cooperate with the Committee on this matter, was the problem of verification of the wishes of the peoples involved. It is no secret that during the extensive and highly useful talks between Lord Caradon and Mrs. Judith Hart (the U.K. Minister of State for Commonwealth Affairs) on the one hand, and the bureau of the Committee of 24 (including myself in my capacity both as Rapporteur of the Committee and Chairman of Sub-Committee III) on the other, the issue on which the decision of the Committee appeared to rest was whether the U.K. was willing to allow the U.N. to send a visiting mission to the six territories. It may be of interest to note that the final decision reached by the Committee took into account in large measure the views of the U.K. Of the two operative paragraphs of the resolution, the

one which referred the question to Sub-Committee III for further study was acceptable to the U.K. The first operative paragraph, which presented some difficulties for the U.K. reaffirmed.

. . . that General Assembly Resolution 1514(XV) continues to apply to these territories and calls upon the Administering Power to expedite the decolonization of these territories in conformity with the Declaration contained therein.

An amendment offered by Uruguay, which had the support of the U.K. would have replaced this operative paragraph by one that reads that the General Assembly "reaffirms that the provisions of General Assembly Resolution 1514(XV) of 14 December 1960, and other relevant resolutions must be fulfilled in these territories." The effect of the Uruguayan amendment would have been to follow the precedent established in the Cook Islands case by reaffirming the U.N.'s authority and responsibility under Resolution 1514(XV) with respect to the territories involved while at the same time releasing the U.K. from its obligations to transmit information under Article 73e of the Charter.

The conclusions which one might draw from the case of the six territories is that:

a) Decolonization in the case of small territories, in the U.K.'s view amounts to no more than sharing with a dependent territory its sovereign rights. Responsibility for internal matters would be left in the hands of the dependent territory, while foreign and defense matters would remain the responsibility of the administering power.

b) More flexibility on the part of the U.K. especially with respect to verification of the wishes of the populations concerned, by way of accepting, for example, U.N. visiting Missions might have bridged the gap between the minority and the majority of members. Such an accommodation would not have gone, however, any further than that reached for the Cook Islands. In the case of the Cook Islands where the new status had been arrived at as a result of a referendum held with the presence of a U.N. observer, the Assembly declared that New Zealand's obligations under Article 73e had terminated but that Resolution 1514(XV) continued to apply. In theory such an arrangement fell somewhat short of decolonization. But for all practical purposes, it had the same effect as decolonization.

c) It is also possible that the findings of a U.N. visiting mission to the Six Territories would have differed from the conclusions reached by the U.K. The subsequent events and complaints reached the Committee from several of the Six Territories, in particular Anguilla, and more recently St. Vincent point to such a possibility.

2. THE PROBLEM OF PROVIDING SAFEGUARDS FOR SOVEREIGN RIGHTS OF MINISTATES

Let me now turn to the second aspect of the question, namely the problem of providing safeguards for sovereign rights and freedoms of mini-

territories after decolonization. Here, Professor Fisher has offered many interesting and useful ideas. Of his five-point formula, most of it is a variation of the same theme as formulated and put into practice by the U.K. He goes a step further, however, by envisaging the possibility that a microstate whose foreign affairs are left in the hands of a large state, possibly the former colonial power, should be able to represent itself on matters of interest to it, both in international organizations and international affairs generally.

Although, as I have tried to show, contrary to what Professor Fisher maintains, the Committee of 24 has not acted "as an international lobby for absolute independence regardless of the consequences." It, or the U.N. as a whole, would not be prepared to accept the case of a divided sovereignty representing decolonization. For this category of microstates in which invariably the Administering Power continues to assume the unilateral responsibility for defense and foreign affairs, the question of admission to the U.N. would not arise, since they would not pass the test of statehood. They would not be able to participate in U.N. affairs without the intermediary of the Administering Power, although in the case of Cook Islands, the General Assembly expressed the hope that the U.N. Development Programme and the specialized agencies would help strengthen the economy of the Cook Islands. Even here the Assembly preferred to remain silent on how this help was to be given.

How then could microstates be enabled to have direct access to the U.N. without having to undertake the heavy burdens of membership in the U.N.? I believe the formula which Professor Fisher himself advanced in Sub-Committee III when he was championing independence for Anguilla merits attention. At that time, he suggested among other possibilities the establishment of some form of association with the U.N. In my own view, association with the U.N. could be meaningful if it offered an alternative to association with another state, especially the former administering power. Under such an association, the U.N. could readily offer a microstate adequate safeguards for its security. Apart from existing security provisions of the Charter and various relevant resolutions, the U.N. could formulate additional security measures to safeguard the sovereign rights of the microstate. In fact, Resolution 2134(XXI) of the General Assembly was particularly designed to provide U.N. guarantee for the territorial integrity and sovereignty of certain territories which were about to emerge as independent states.

In foreign affairs matters, association with the U.N. offers so many possibilities which could readily satisfy the limited requirements of a microstate. In this connection, I should like to mention a valuable study made under the auspices of the Carnegie Endowment for International Peace, by Miss Patricia Blair, in which a whole chapter is devoted to "intermediate membership." The idea, however, of defining the various implications of associated membership in the U.N. has to be further studied. Last year, following the discussions on Anguilla in Sub-Committee III, as the representative of Iran, I recommended that the Secretary-General

be asked to "initiate a study of the feasibility of arrangements under which small territories which may wish to be fully self-governing might be enabled to have available to them the status of a sovereign entity associated with the U.N." This proposal, however, did not receive much support at the time.

This brings me to the last point made by Professor Fisher, that there should be established in the U.N. an office to deal with microstate matters. Here, I fully share Professor Fisher's views, provided that the office in question would be established either for preparation of associated statehood matters or after the idea has been accepted by the United Nations.

Finally I should like to conclude by saying that finding a solution to the problem of microstates' participation in world affairs is in the interest of everyone concerned. If the Administering Powers wish to have the endorsement of the world community through the U.N. for true decolonization, they must be prepared to accept U.N. involvement or presence in one form or another in the course of decolonization. I have no doubt that the majority of members of the U.N. for their part would show flexibility and understanding for the peculiar circumstances of the microstates. Only through such cooperative effort could both the aspirations of peoples who cry "never too small to be free" and the interests of the U.N. against inflation be safeguarded.

The CHAIRMAN thanked Mr. Esfandiary, and called on Miss Elizabeth Brown, Director of the Office of United Nations Political Affairs, U. S. Department of State for her comments.

COMMENTS OF ELIZABETH BROWN

Office of United Nations Political Affairs, Department of State

At the time of the admission of the Maldiv Islands, as Mr. Rapoport noted, the United States first expressed its concern over the problem posed by the admission of very small states to the United Nations, particularly in light of the resulting imbalance between voting power and real power. At the same time, the United States, as the speakers both noted, recognized there would be serious political problems inherent in establishing any criteria, not the least of which were those inherent in the present composition of the United Nations. Our representatives consequently went on to suggest that since we could not correct the errors of the past we should look ahead in the abstract to see whether there are any general principles and procedures which, developed at a time when no specific applications are pending, could provide a guide for the future.

Like our two speakers the State Department has also tried to survey the now non-self-governing territories that are likely to attain full independence and possibly seek U.N. membership, even though they do not possess the qualifications required to carry out the obligations such membership imposes.

Too little has been said here today about the nature of the obligations of a Member State under the Charter. These are not just the obvious

ones such as contributing a fair share to meeting the costs of the Organization, but also some inherent ones if U.N. membership is to be meaningful. For example, there should be at minimum effective participation in the General Assembly and maintenance of a small permanent mission at U.N. Headquarters. Much more extensive participation is of course desirable if the full benefits of U.N. membership are to be realized.

We have to recognize, however, that a number of small territories on attaining independence will have serious difficulties meeting their domestic needs, let alone maintaining meaningful representation in New York. Professor Fisher has mentioned such obvious problems as the need for qualified personnel in public administration. U.N. membership exercised on little more than a token basis will severely strain the already limited resources of such a state to no tangible end. From the United Nations standpoint, admission of states that clearly do not have the resources to contribute positively to the work of the organization, but once admitted will have an equal voice with members who can contribute, will undermine both the prestige and usefulness of the organization.

These are some of the considerations behind our urging that the United Nations develop minimum criteria to serve as future guidelines. I would emphasize, however, that we attach equal importance to finding other forms of association short of full membership that will permit meaningful association of such small entities with particularly relevant activities. Probably this latter problem can better be dealt with in the General Assembly, while the Security Council, with its initial responsibility for recommending applicants for admission can concentrate on the development of minimum criteria.

Let me turn now to the two papers we heard. Both approach the problem primarily from the standpoint of the needs and desires of small emerging states rather than from the broader perspective of the United Nations. Both speakers proposed establishment of a special unit in the Secretariat to provide information, serve as a channel of communication, and provide advice to small entities on the verge of self-determination. I can see a very useful purpose in a U.N. communication and information center for ministates. Authorizing it to assume an advisory rôle, however, raises some serious problems, particularly if one considers the implications of providing political and constitutional advice to such an area when it is still under the administration of a sovereign state. After all, the U.N. is an organization of sovereign states without any jurisdiction except as specifically set forth in the Charter. So far as dependent territories are concerned, except for trust territories, it can only undertake functions that the administering power is willing to see exercised. On the basis of past experience, that is to say, what the metropole will find acceptable, technical assistance in the narrow sense could perhaps be included, but very little more.

One of Professor Fisher's points suggesting a flexible approach to the question of whether a territory is "independent or not independent" raises a whole host of problems which I should simply like to flag. For

the U.N. to open "some procedural door" to entities "without regard to their official status" involves more than procedure and could jeopardize legitimate U.N. interests. After all, we have to accept the fact that the U.N. is an organization of sovereign states, and its orientation simply reflects that of its members. The U.N. is a highly political body, and the Secretariat does not operate in a political vacuum. Let me simply raise the question of how an office in the Secretariat could operate on any basis other than advice and direction from members of the organization whether such advice and direction came through the General Assembly or through some more partisan body such as the Committee of 24? It is too bad that there is no assurance of constructive benevolence built into the Organization, but we live in a world where self-interest is paramount.

The United States continues to consider the problem of ministates an urgent one, but I would urge the need to find solutions that do not involve Charter revision or amendment. Thus I would emphasize again the need to move forward in the Security Council to see whether agreement is possible on minimum criteria to serve as future guidelines and if this proves possible in the Assembly on forms of association short of full membership. I agree that we should give ministates both direct access to the U.N. itself and access to the technical assistance available through the whole U.N. system. We should also try to cultivate growing understanding and acceptance by emerging ministates of the desirability in their own interest of maintaining some kind of special relationship with a larger state or states which would provide for full self-government without leaving the ministate defenseless against external pressure and which would avoid in effect substituting the United Nations for the former administering power.

The CHAIRMAN thanked Miss Brown, and called on Professor Stanley de Smith of New York University for his comments.

COMMENTS OF STANLEY DE SMITH

New York University Center for International Studies

Perhaps I should begin by saying that I too have been carrying out some research into aspects of the problems presented by very small territories in the modern world. My temporary base, for this purpose, is the New York University Center for International Studies; my home base is the London School of Economics and Political Science. During the past six months I have visited small island territories in the Indian Ocean, the Caribbean, and the English Channel. In July I shall be going to Micronesia in the Pacific. But I am not a representative, distinguished or otherwise, of any administering power.

This week Mauritius became the 124th member of the United Nations. My visit to the Indian Ocean was to attend the Mauritius Independence celebrations as an official guest of the Government of Mauritius. I had been Constitutional Commissioner for Mauritius since 1961. I mention these points lest any of the remarks I am going to make should cause

people to misinterpret my general attitude towards the problems of decolonization.

In the interests of brevity I shall omit some comments I should have liked to make on the thoughtful and thought-provoking comments made by Mr. Esfandiary.

In Mr. Rapoport's lucid exposition I find little to quarrel with, though I differ from his charitable interpretation of the reasons which led the United Nations to arrive at what I believe to be (with due respect to Mr. Esfandiary) the misguided decision not to recognize as an act of decolonization the grant of associated statehood to the small British territories in the Caribbean. The case of the Cook Islands is easily distinguishable on other grounds. In 1965 New Zealand, a minor colonial power, was quite well regarded; in 1967 the United Kingdom could do nothing right in the eyes of a majority of U.N. Members. Moreover, I would remind the audience that although the General Assembly did approve the Cook Islands arrangements, the Fourth Committee rejected an amendment by only 29 to 28 with 43 abstentions. I am inclined to agree with the suggestion that a new unit of the United Nations Secretariat should be established to supply political and other information to small independent states which are not members of the United Nations, and to act as a clearing house. This would fill a need which is likely to grow, and such a service could conceivably help to dissuade some impoverished ministates and microstates from applying for membership. It may, as he suggests, be feasible to extend this service to small territories on the verge of self-determination. Swaziland might be such a case (though the U.N. would have to move quickly, because Swaziland is due to become independent this year); so might Tonga and the Bahamas. The attitude of the protecting or administering power would of course, have to be taken into account, as Miss Brown has pointed out. And there is also the question of the financial resources of the U.N. That would be quite an expensive operation.

Professor Fisher offers a more tempting target. In fact we share a good deal of common ground. For instance, I agree with him that the process of decolonization has reached (or almost reached) the bottom of the barrel. I agree with his strictures on the Committee of 24 for its obsessive preoccupation with the concept of absolute independence, and if there were time I could add many of my own. The idea that New Zealand ought to grant absolute independence to the pathetic Tokelau Islands seems to me quite absurd. Again, anyone at all familiar with the political and economic facts in Mauritius knows that a great number of the comments made in the Committee of 24 and its subcommittees (and indeed in the Fourth Committee of the U.N.) in connection with that island's affairs in 1967 were a farcical travesty of the truth; and I am fully prepared to provide chapter and verse in support of that charge. Matters such as these constitute the main reason why the administering powers have generally refused (and are, I imagine, likely to continue to

refuse) to accept U.N. visiting missions to their dependent territories. If they had reason to believe that constructive and informed criticism of the kind made by visiting missions of the Trusteeship Council would emerge, things might be different. But what the administering powers find at present is mounting verbal abuse and, on the part of many delegates, a blank refusal to accept hard facts if they happen to find them unpalatable.

One must above all be realistic. Professor Fisher's paper seems to me an imaginative but uneasy compromise between realism and romanticism. As a romantic champion of the claims of Anguilla to self-determination, he has constructed an original framework within which the needs of Anguilla could be accommodated; and in so doing he has, I think, deviated from the paths of realism. For instance, if I understand him correctly, he wants a new U.N. office or unit to have powers of initiative as well as powers to advise; and to be able to exercise these powers with regard not only to existing independent microstates and territories on the verge of self-determination but also to secessionist and would-be secessionist areas of existing dependent and independent countries. Apparently he also wishes to see preferential international aid given to very small and poor territories.

Taking the last point first, if really substantial assistance were to be given to territories on a preferential basis merely because they were very small as well as poor, there would, I am quite sure, be a loud outcry from other countries which had the misfortune to be both large and poor and were also competing for scarce resources. Also is the question of who should have access to the U.N. and how. At present Anguilla has access to the Committee of 24 and the Fourth Committee, but only because the State of St. Kitts-Nevis-Anguilla is still regarded as a colony. The results have apparently been disappointing to the Anguillians; the U.N. continues to recognize the territorial integrity of the State of which Anguilla forms one part. Anguilla wants more from the U.N. But what for Anguilla is too little will be far too much for others. The Government in St. Kitts objects strongly to these proceedings at the U.N. I have little doubt that Antigua will object just as strongly if separatist tendencies in Barbuda are indirectly encouraged by the U.N.; and similarly with Mauritius and Rodrigues. Separatism is likely to become a growing problem in small island groups, partly because the new central governments may lack the physical means of suppressing revolts. I cannot think that it ought to be fortified by the creation of new institutional devices. Separatism is also a potent factor in many new and not so new mainland states. There it is generally easier for the central government to apply coercion. But, unless I again misunderstand him, Professor Fisher, rightly refusing to discriminate between islanders and others, would give access to the U.N. perhaps to the Baganda, the Katangans, and certainly to secessionist areas in certain mainland states. This is surely the hottest of potatoes. I too am generally sympathetic to the desire of small peoples not to be ruled by people whom they dislike. However, I am far more apprehensive than is Professor Fisher of the

dangers of widespread fragmentation, and I do not share his optimism about the effects of some of his own proposals in discouraging would-be secessionists from going it alone.

To sum up my own views: there is a good *prima facie* case for the proposal made by Mr. Rapoport; there may be a case for exploring cautiously some of the interesting ideas suggested by Professor Fisher; if any preferential treatment is to be given in the matter of aid and technical assistance to very small states, and possibly other political entities whose separate identity is already recognized by the appropriate international body, it should not be offered in a form so attractive as to incense larger underdeveloped countries or to encourage separatist fragmentation in island groups by persuading outer islands that they ought to obtain the necessary political qualifications themselves.

As for the U.N., let us hope, with Professor Fisher, that its members will grow wiser, calmer, and more detached, so that we can all intone the words of the Book of Revelations (iv, 4):

And round about the throne were four and twenty seats: and upon the seats I saw four and twenty elders sitting, clothed in white raiment; and they had on their heads crowns of gold.

The CHAIRMAN thanked Professor de Smith for his comments and then opened the meeting to discussion from the floor.

Mr. PAUL R. V. BELABO, Nigerian student at Columbia University Law School, observed that the question of participation of "ministates" in international affairs, viewed by some as a problem of decolonization, has a negative as well as a positive aspect, and that the views of the panelists reflected this division. He typified the negative aspect as the seeming uneasiness on the part of the major states that the ministates should be able to participate on terms of equality with them in international organizations, especially in the United Nations where this state of affairs is said to have tipped the balance of voting power into the hands of the so-called "third world." He cited the positive aspect as the ability of the ministates to participate effectively in international organizations and pointed out that the duties of participation were not as onerous as some would make it seem. The Charter of the United Nations for instance, did not require a state to have a large army or the other trappings of a major state as a condition of membership, so that there would be no inconsistency between a major state's having means to place at the disposal of the U.N. and a small state's not having the same.

Mr. BELABO stated that for all too long the relations in the world have been based on power, as reflected in the existence of permanent representation in the Security Council, and that nations should start thinking in terms of humanity rather than power.

Professor S. PRAKASH SINHA of the University of South Dakota School of Law, objected to the term ministate because it failed to serve as a useful classificatory symbol for analysis. It was not clear whether states were mini because of territory, population, military power, economic prosperity, quantum of international activity, intensity of international problems, or

the fact of newly achieved independence. As to the question of self-determination, the rôle of the United Nations in this respect had ranged from being declaratory, to recommendatory, to constitutive, and the principle had been applied to the peoples of overseas colonies identified on the basis of a territorial, rather than ethnic, cultural, or social, standard. The forms of self-determination had been (1) independence, (2) self-government, (3) association with an independent state, and (4) integration with an independent state. The United Nations must now face the policy question whether the demise of traditional colonialism represented the fulfillment of the principle of self-determination, or whether the principle ought to be extended to the contiguous, as distinguished from overseas, colonies, such as Estonia, Latvia, and Lithuania. A proposal for such extension would entail such problems as: (1) the identification of the peoples for whom the claim of self-determination was made; (2) the ascertainment of their desire for self-determination; (3) the form in which self-determination was to be realized; (4) the extent to which an existing state could be disintegrated; and (5) the criteria for creation of a new state and disintegration of an old one. But these problems of application of the principle were not sufficient argument for foreclosing the question of policy posed above.

Mr. JOHN SURR asked the panel to comment on the feasibility of technical assistance in legislative drafting for ministates, particularly in the adoption of uniform standards and uniform laws, in the context of Professor Fisher's suggestion that an office be established within the United Nations for the coordination of technical assistance activities for ministates.

Mr. RAPOPORT replied that there were already opportunities for the United Nations, under its development programs to provide legal and technical assistance at its request to any State Member of the United Nations or of a specialized agency. Ministates would probably adopt different laws and procedures. However, some uniformity might result from the use of the same experts, or experts having had experience in the same field in other small countries.

Mr. HENRY G. DARWIN of the Permanent Mission of the U.K. to the U.N., noting that his remarks were personal, said that Anguilla inevitably brought up the question of secession; indeed, the problem of possible secession was an important aspect of the question of ministates. States require services, and small places obtain them from larger ones; for instance, Martha's Vineyard obtains them from Massachusetts. In connection with Mr. Esfandiary's statement, he said that the Committee of 24 has lately emphasized self-determination through negotiation, but this was because the remaining territories are often those which other states claim. In the case of Gibraltar, moreover, the United Nations had in fact moved against self-determination and in favor of negotiation. He thought that if a U.N. advisory unit tried to give political advice on whether a ministate should seek independence, it would get into great difficulties, not least because of conflicting claims to the territory involved.

Professor FISHER explained his address by pointing out he had not suggested that there be discrimination in giving aid to ministates, but only discrimination in the availability of a U.N. advisory office, and further that such an office be only advisory, that it be a place for consultation.

In response to Mr. Darwin, he pointed out that most discussions of secession are irrelevant to the real problems of the people wanting to secede. The question of the status of secessionists should not obscure the substance of underlying difficulties. Discussion of self-determination at the U.N. has been preoccupied with status.

Basic to self-determination is the question of who has the right to it; but the international community has no mechanisms for discussing that question until the problems giving rise to a desire for self-determination have exploded. Making institutions available for discussing secessionists' problems would not mean approving secession. Conferring limited status on possible secessionists by permitting discussion at the U.N. would not mean fragmentation. Discussion could avoid fragmentation. Anguilla wanted only reconsideration of its status and separation from St. Kitts, not necessarily sovereignty. Anguilla had had no self-government under St. Kitts, and no response to requests for help.

Under existing conditions a people has no one to talk to unless recognized as a separate sovereign state, even though it might prefer discussion and some resolution of its problems short of independence.

Professor HENRY H. HAN of Central Michigan University referring to Professor Fisher's remarks, asked if once ministates requested other states to perform sovereign functions on their behalf, whether the ministates would not be subject to an inherent danger of absorption in the other states. If the effective functions of these states are the real importance regardless of who carries them out (*i.e.*, partly by ministates and partly by the other states) as Professor Fisher argues, why not consider some international machineries to help the ministates? In this connection, he asked Mr. Rapoport whether he would consider recommending a special U.N. section or other international machineries to perform such services as consular functions and "visiting judges" under some workable arrangements.

Mr. RAPOPORT replied that he did not think that there was a special danger of absorption against their will of ministates by other states performing some of their sovereign functions, if this delegation of sovereignty was voluntary and rescindable. As far as the functions of a special United Nations Secretariat section on ministates was concerned, there were numerous possibilities about which he himself was not entirely clear in his mind. He thought that the United Nations section would be merely advisory at first and would probably serve non-United Nations Members exclusively. It would advise ministates on what matters were before the United Nations and what discussions the ministates should seek to participate in. Further functions might develop in the light of experience. But in any case, the officials of the section would not be decisionmakers. They would simply function as conduits for services to and decisions by the ministates. The main thing, he said, is to begin and see what develops,

rather than to attempt to fabricate a fully developed institution at the outset.

Professor EGON SCHWELB of Yale Law School, asked what the legal basis for Spain's standing in the dispute over decolonization of Gibraltar is. Observing that the human rights provisions of the U.N. Charter had been inserted in response to the actions of the Fascist governments of inter-war and World War II periods, he asked how it was compatible with those provisions to attempt to place the population of Gibraltar against its will under the jurisdiction of the only surviving fascist government of that era.

Mr. DE SMITH responded that he shared the doubts reflected in Professor Schwelb's question. The justification offered at the U.N. in 1967 had been that the existence of Gibraltar as a colony violated the territorial integrity of Spain.

Mr. DE SMITH also said he preferred to use the phrase "very small territory" rather than "ministate" to avoid problems in defining what is or ought to be a "state." As to St. Kitts-Nevis-Anguilla, he had been advised that if Anguilla successfully seceded, Nevis was likely to demand secession. Fragmentation, he believes, will be a genuine, subsisting problem.

Professor VED P. NANDA of the University of Denver College of Law, asked who decides between the interests and the wishes of the people when the two diverge toward different results in achieving decolonization. He suggested that perhaps the dichotomy presented in Mr. Esfandiary's remarks between the concept of self-determination and the desired outcome of decolonization might best be resolved by a contextual analysis of each situation by the appropriate organ of the United Nations.

Mr. ESFANDIARY answered that the distinction amounted to deciding whether decolonization would be achieved through referendum or negotiation. In the case of Gibraltar, Spain had assured the Committee of 24 that the interests of the population of Gibraltar would be taken into account in its negotiating positions. Since adhering to wishes of the population would not have achieved decolonization, the Committee had decided it should be achieved by negotiation.

Professor QUINCY WRIGHT said that it is legally important to recognize the meanings of "self-determination." There are at least six, depending on who has the right to it. These are: 1. The right of a *state*, as in its right under Article II(7) of the U.N. Charter, to nonintervention in its domestic affairs. In this meaning, neither the U.N. nor any state can interfere on behalf of a secessionist area like Anguilla.

2. The right of a *country*, in a geographical sense, to round out its frontiers. The U.N. appeared to recognize such a right when India occupied Goa and the U.N. was persuaded not to interfere. The same interpretation of self-determination has been reflected in Spain's attitude toward Gibraltar and Indonesia's attitude toward North Borneo during the Sukarno period.

3. The right of a *colony* or *minority*, that is, of a people who regard

themselves as socially or culturally distinct. In effect, it is the right of secession, as claimed by the people of the Confederate States of America and by the numerous colonies that have in recent years gained independence from the British, French, and Dutch empires.

4. The rights of *individuals*. This meaning includes the notion that human rights should be insisted upon and that the U.N. or states should intervene in other states to secure them—a right of intervention.

5. The right of a *government*. From this meaning follows the right to intervene at the request of a recognized government attempting to maintain itself. This meaning has been reflected in the policy of the Holy Alliance in behalf of legitimate monarchs, and the U. S. policy to contain communism. It is a right to prevent the success of a revolution.

6. The right of *revolutionists*, as in the Communist theory of “wars of liberation” with its component right of outside states to intervene at the request of revolutionists to assure their success.

The inconsistency of these meanings is obvious. The first forbids intervention in the internal affairs of a state while the others permit it in certain circumstances. The Charter seems to permit intervention by the United Nations, but not by a state, if denial of human rights or self-determination of a colony, or imminent intervention by an outside state is believed to “threaten” international peace (Article 39), as in Indonesia (1946), the Congo (1960), Rhodesia (1966), and South Africa (1967).

Dr. WILCOX thanked all who had contributed to the interesting session, and the session adjourned.