



Thursday, 31 January 1957,  
at 3.50 p.m.

New York

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**Chairman: Mr. Enrique de MARCHENA**  
(Dominican Republic).

*In the absence of the Chairman, Miss Brooks (Liberia), Vice-Chairman, took the Chair.*

**AGENDA ITEM 34**

**Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter: reports of the Secretary-General and of the Committee on Information from Non-Self-Governing Territories (A/3105 to A/3109, A/3110 and Corr.1, A/3111 and Add.1 and 2, A/3112 and Add.1 and 2, A/3113 and Corr.1, A/3114 and Corr.1 and Add.1, A/33115, A/3127) (*continued*):**

- (c) **General questions relating to the transmission and examination of information (A/C.4/331 and Add.1, A/C.4/346, A/C.4/L.467) (*continued*)**

1. Mr. NOGUEIRA (Portugal) said he would reply to the various questions his delegation had been asked at the 616th and 617th meetings.

2. The Yugoslav representative had asked at the 616th meeting whether the inhabitants of Portuguese overseas provinces had absolutely the same status as those of the Portuguese provinces in Europe. The reply was in the affirmative; there was one status and one only, and it applied to all inhabitants of all the provinces.

3. The Yugoslav representative had gone on to ask how the constitutional reservation was expressed in the Portuguese Constitution. Article 5 of the Constitution provided that the Portuguese State should be a unitary Republic; consequently Portugal was a single whole, the sovereignty of which was one and indivisible. Article 1 of the Constitution enumerated the territories comprising the Portuguese State. Under article 3, the nation comprised all Portuguese citizens, all being subject to Portuguese laws; moreover, according to article 18 of the Civil Code every Portuguese, wherever he might be, was a Portuguese citizen.

4. At the same meeting the Philippine representative had asked whether the two categories of citizens in the overseas provinces also existed in the European provinces of Portugal. The answer was in the affirmative;

there was one, and only one, status for all the inhabitants of all Portuguese territories.

5. The Philippine representative had also asked whether the political rights of the two categories of citizens were the same in the overseas provinces and in the provinces of metropolitan Portugal. The answer was in the affirmative. In all the Portuguese territories there were elements of the population which did not enjoy full political rights. In that connexion he pointed out that the fact of being "civilized" or "uncivilized"—a distinction unknown in Portuguese legislation—had nothing to do with the possession of political rights. Enjoyment of those rights depended on certain conditions defined by law.

6. In reply to another question by the Philippine representative, Mr. Nogueira said that the political rights of the inhabitants of overseas Portugal were identical with those of the inhabitants of metropolitan Portugal.

7. Proceeding to the questions asked by the Iraqi representative, at the 617th meeting he noted that the latter, struck by the distinction between the overseas and the metropolitan provinces, had come to the conclusion that the Portuguese territories did not form a single whole. The Constitution did in fact distinguish between the territories, but only for administrative purposes; and that was a feature to be found in the Constitutions of a number of countries. He cited, by way of example, the Greek Constitution, article 103 of which contained special provisions for the administration of Mt. Athos, the Italian Constitution, article 116 of which provided special treatment for such areas as Sardinia, Sicily and Valle d'Aosta, and the Venezuelan Constitution.

8. Mr. RIVAS (Venezuela) pointed out that the Venezuelan Constitution was not on the Committee's agenda.

9. Mr. LOJENDIO (Spain) said that it was equally unjustified for the Committee to be examining the Portuguese Constitution.

10. Mr. RIVAS (Venezuela) said that his delegation had not asked any questions on the Portuguese Constitution.

11. Mr. NOGUEIRA (Portugal) said that, under the Portuguese Constitution, not only the overseas provinces but also the adjacent islands were subject to different administrative arrangements.

12. The Iraqi representative had expressed surprise that Portugal should possess a Ministry of Overseas Provinces; but Portugal's unity of sovereignty was not incompatible with a plurality of administrations. Politically, the Ministry of Overseas Provinces was in exactly the same position as the other ministries, and its function was to ensure liaison in matters affecting the overseas provinces. Other ministries, such as the Ministry of the Interior, the Ministry of Defense, the Ministry of Finance, the Ministry of Foreign Affairs

and the Ministry of Transport and Communication, also had powers extending to the overseas provinces, while in some spheres the Ministry of Overseas Provinces had jurisdiction in metropolitan territory. Some might consider that complex organization open to criticism; but it might be useful in that connexion to draw attention to those highly complicated structures, the Swiss Confederation and the British Commonwealth; all the members of the latter were free and independent nations.

13. Replying to the Yemeni representative's question (617th meeting), he said that the governors of the overseas territories were not elected, but appointed. Portugal was not a federation in which political power was divided; it was a unitary State in which the governor represented the executive power. However, the local inhabitants also had some part to play; side by side with the governors there were local councils, such as the Legislative Council, which was elected by direct suffrage and whose opinions might, in some cases, prevail over the governor's. Moreover, the existence of governors was again a matter of administration; they did not possess the same powers in the overseas territories as in the adjacent islands.

14. Confirming what the Brazilian representative had said (617th meeting) about the sovereign unity of all Portuguese territories throughout history, he added that the Portuguese Government could move from one territory to another, as witness the Act concerning political organization in time of war, article 30 of which provided for the transfer of the capital. In such circumstances, moreover, the governors, as representatives of the executive power in the overseas provinces, were empowered to set up a new government.

15. The Yemeni representative had asked whether the inhabitants took part in the administration of their own affairs. He cited Act No. 39666, which provided that institutions were to be administered by the inhabitants, in conformity with their traditions and with the law.

16. Replying to another question by the Yemeni representative, Mr. Nogueira said that the Ministry of the Interior had also in some fields jurisdiction in the overseas provinces. He added that he had found some of the Yemeni representative's questions somewhat surprising.

17. The Chilean representative had asked (617th meeting) what opportunities for education were open to Portuguese in the overseas provinces. The reply was that such persons were not subject to any special provisions; all the existing facilities were open to any Portuguese, without distinction. In order to give students free access to education, which was open to all at all levels, the Government granted scholarships and paid school fees and, where necessary, the cost of air travel.

18. He had also asked whether Portuguese in the overseas provinces were able to exercise their profession under the same conditions as those in the metropolitan provinces. The answer was in the affirmative; there were doctors, lawyers and engineers of various races and creeds in all the Portuguese territories.

19. The same representative had asked whether there were any Portuguese born in the overseas territories holding important political posts. That was a difficult question to answer; there being no discrimination, there were no statistics of officials by birth. In the past, there had been several non-white Portuguese citizens, born

in the overseas provinces, who had held the office of governor-general: in Macao in 1824, in Goa in 1843, and in Angola in 1917. Another Portuguese citizen from the overseas territories had been President of the Portuguese National Assembly.

20. His country had nothing to hide; it had furnished all the relevant information to the specialized agencies through the appropriate channels, and its good faith could not be challenged. As to the desirability of publishing information on the progress achieved in the Portuguese overseas provinces, Portugal alone was the judge of that.

21. In conclusion, he wished to point out that he had made his explanatory statement to the Committee only out of courtesy to it and to the delegations represented on it; he had been under no obligation to do so. Portugal's position differed from that of other States which were answerable to the United Nations for their actions by virtue of a legal instrument. Portugal, for its part, was not before the Committee in the position of a defendant.

22. Mr. DORSINVILLE (Haiti) said that his statement had already been prepared when the representative of Portugal had replied to questions put by the various delegations. He had accordingly not had the time to consider the latest information provided by that representative.

23. He was approaching the matter in a liberal spirit, and was inclined to a liberal interpretation of the Charter; he hoped that he was not alone in that.

24. All the new Members which had replied to the Secretary-General had stated that they had no territories in which the inhabitants had not achieved full self-government. Accordingly, the question was to define what territories came into that category. He had no doubt that the Fourth Committee was competent to deal with the matter; resolution 334 (IV) had stated that it was within the responsibility of the General Assembly to express its opinion on the principles which had guided or which might in future guide the Members concerned in enumerating the territories for which the obligation existed to transmit information under Article 73 e of the Charter. When new Members were admitted, the Assembly was fully entitled to consider whether the list drawn up in 1946 should be expanded; and, to that end, it could draw attention to certain features distinguishing metropolitan from non-metropolitan territories.

25. Admittedly, the word "territory" had no very precise juridical meaning in international law, and might have widely-varying meanings in a constitutional text. For instance, the Territory of Papua had been regarded by the Australian Government as a Non-Self-Governing Territory under Chapter XI of the Charter; but no one had disputed the fact that the Northern Territory of Australia did not come under that Chapter. At the San Francisco Conference it had apparently been agreed that the term "Non-Self-Governing Territories" meant the non-metropolitan areas known as colonies, possessions or protectorates, whose inhabitants had not yet achieved a full measure of self-government. That was the interpretation which the United Kingdom Government had still maintained in 1953, when the question of factors had been under consideration.

26. He wondered whether the concept of "sovereignty" had any meaning in relation to the Non-Self-Governing Territories. There was no mention of sover-

eignty anywhere in Chapter XI of the Charter. The obligations laid down in that Chapter were to be assumed by the States which had or assumed "responsibilities for the administration" of the Territories in question. No difficulties had hitherto arisen with regard to the transmission of information, even in the case of territories integrated into the metropolitan country; thus, New Zealand had not ceased to transmit information when, in 1948, the Tokelau Islands had been incorporated within its territorial boundaries.

27. It had been suggested that in drawing up the list of Non-Self-Governing Territories the Assembly had simply endorsed the decision of the Member States. At the San Francisco Conference, the Australian delegation had proposed that before designating the territories to which Article 73 was to apply, the General Assembly should convene one or more conferences of States responsible for the administration of territories which might fall into that category; but the Conference had decided not to discuss individual territories. Later, however, the General Assembly, in its resolutions 334 (IV) and 648 (VII), had made known its views on the transmission of information. Moreover, Professor Kelsen, an expert on the Charter, had expressed the view that the obligations set forth in Chapter XI were binding on States which had not participated in the San Francisco Conference but had since become Members of the United Nations, that repeated failure to carry out the obligations laid down in Chapter XI might justify the application of sanctions, that the General Assembly, by its resolution 66 (I), had left it open to Member States to decide which territories came under Chapter XI, and that the General Assembly might nevertheless designate such territories by recommendation, but that such recommendations would not be binding. While it was true that in many cases the recommendations of the General Assembly had not been respected, that did not mean that the Assembly had been wrong; legal arguments were often used to circumvent the moral obligations implicit in the Charter. In becoming Members of the United Nations, States pledged themselves to respect both the letter and the spirit of the Charter.

28. He would deal with the Portuguese overseas territories only because the scanty information which his delegation had been able to obtain referred in fact to the Portuguese territories in Africa. He had listened carefully to the Portuguese representative's statement; but the matter was not yet entirely clear, and there were still some facts which gave grounds for concern. In that connexion, he quoted an article published in the review *Présence africaine*, which gave a peculiar definition of the words "indigenous inhabitant" in the Portuguese overseas territories. According to that definition, it appeared unlikely that the indigenous inhabitants enjoyed safeguards or personal freedoms equal to those of Portuguese nationals born in metropolitan Portugal. In Guinea, it might be noted, out of a total population of 510,777 there were 502,457 Africans described as "non-civilized" as against 1,478 described as "civilized"; in the capital of Mozambique, there were 1,278 "civilized" and 56,515 "non-civilized" Africans out of a total population of 93,303. With regard to educational conditions, he wished to quote some figures published in the same review.

29. Mr. NOGUEIRA (Portugal) pointed out that the Fourth Committee was not considering the administration of Portuguese territory, but Portugal's reply to the Secretary-General.

30. The CHAIRMAN requested the representative of Haiti to confine his comments to the item on the agenda.

31. Mr. DORSINVILLE (Haiti) said that he would not press the matter. His delegation had hoped that after an ample exchange of views, in which the participants would deal with the various aspects of the question, and not only with the legal aspect, the Government of Portugal would come to understand that it would be in its own interest voluntarily to furnish information on actual conditions in its various overseas territories. Until further information was forthcoming, his delegation would continue to believe that the peoples of the Portuguese overseas territories did not enjoy all the rights inherent in citizenship, and that they might be considered as being in the category of peoples covered by Chapter XI of the Charter.

32. Mr. LOIZIDES (Greece) said he failed to understand why the Portuguese representative had referred to an article of the Greek Constitution relating to Mt. Athos. The only reason why that peninsula had been placed under a particular régime was to enable the monks who lived there to preserve their ancient traditions.

33. He had listened with great interest to the tribute paid by the Brazilian representative to the liberal and civilizing policy of Portugal (617th meeting), but felt bound to point out that peoples which, unlike the people of Brazil, had not had the opportunity to develop in peace towards independence retained very unpleasant memories of colonial times.

34. In co-sponsoring the draft resolution in document A/C.4/L. 467, Greece had expressed the hope that it would be joined by other delegations representing various regions of the world, in order to maintain the necessary spirit of objectivity among the members of the Committee. Because it wished to be impartial, his delegation would deal only with the theoretical and general aspects of the problem. It deeply appreciated the moderation which had been shown by the representatives who had taken part in the discussion. The question touched on certain essential principles of the Charter; for that reason, the appointment of an *ad hoc* committee to report to the General Assembly would be particularly useful. A State which refused to transmit information on the territories referred to in Article 73 e might justify its position by a number of arguments. It might say that Chapter XI was merely a "declaration", and imposed no obligation. But even if its title was misleading, that Chapter was undoubtedly a compact binding on the parties, and the obligations it entailed were identical with the other obligations that States had assumed in signing the Charter. A State might also say that it did not administer any Non-Self-Governing Territories. That argument was untenable unless it was confirmed by world public opinion; the State concerned had to convince the world that its overseas territories were no longer colonies, at the same time submitting proof of its statement to the United Nations. The constitutional argument was not in itself valid unless, firstly, all the inhabitants of the territory elected representatives to the metropolitan assembly on a footing of equality, in which case, if the population of the territory was larger than that of the metropolitan country, its representatives should be in the majority; or secondly, the territory had its own Government, functioning on the basis of democratic institutions; in which case, if the territory was inde-

pendent it could apply for admission to the United Nations, or, if it was non-self-governing, there was no reason why a Member of the United Nations should refuse to explain the real situation. Yet who was to decide whether a territory was self-governing or not? Greece was obliged to admit that the decision rested with the General Assembly. In accordance with established practice it was the General Assembly that was responsible for deciding when the transmission of information should cease; that being so, it was also the General Assembly that should decide whether a State should transmit such information to the United Nations.

35. He reserved the right to intervene in the discussion at a later date if necessary.

36. Mr. PERERA (Ceylon) introduced the draft five-Power resolution (A/C.4/L.467). In drafting it, the object of the co-sponsors had been to enable the Committee to achieve constructive results; and they hoped that the draft resolution would be examined in the same spirit of mutual understanding that had characterized the discussion and that it would be adopted by a large majority. The draft resolution was in essence a procedural resolution, and, by adopting it, the General Assembly would not be adjudicating on the substance of the problem. In the first place, the draft resolution merely drew attention to earlier resolutions adopted by the Assembly. Secondly, the Fourth Committee had on a number of occasions in the past established *ad hoc* committees to examine specific problems. Lastly, the proposed *ad hoc* committee would examine the question as it applied to all countries that had recently been admitted to the United Nations.

37. The current situation could best be studied against the background of what had happened in 1946. In reply to a letter from the Secretary-General addressed to them at that time, eight Members of the United Nations had enumerated the territories on which they intended to transmit information under Article 73 e of the Charter. At its first session, the General Assembly had decided not to define the term "Non-Self-Governing Territories", but merely to include in its resolution 66 (I), the seventy-four territories enumerated by the Governments concerned. In the first paragraph of its preamble, the draft resolution referred to that resolution. Subsequently, the Assembly had taken a number of further decisions, in particular in its resolutions 648 (VII) and 742 (VIII). In 1953, it had arrived at a method that would help it to distinguish between fully self-governing territories and territories that were within the scope of Chapter XI of the Charter. The Secretary-General had very rightly referred to those resolutions in the letter he had addressed to the new Member States in 1956.

38. The second paragraph of the preamble to the draft resolution recalled resolution 334 (IV), in which the General Assembly had stated that it was within its responsibility to express its opinion on the principles which had guided, or which might in future guide, the Member States concerned in enumerating the territories on which they should transmit information. Certain Administering Members did not subscribe to that resolution; however, their careful attention should be directed to the communications that certain Member States had addressed to the *Ad Hoc* Committee set up in 1953 to study the question. He read out an important message from the reply of the United States Government (A/AC.67/2, paragraphs 110 and 111), to

the effect that although the administering Powers alone were competent to decide whether information should be transmitted under Article 73 e of the Charter, the General Assembly had the authority, under Article 10, to discuss and attempt to define the expressions "Non-Self-Governing Territories" and "territories whose peoples have not yet attained a full measure of self-government", expressions explicitly used in the Charter. It was because they shared that view that the five Powers had introduced their draft resolution. In examining the replies of the new Members, as it was competent to do, the Assembly was not impugning the latter's good faith. The plain fact was that it had the power to consider whether those replies were in accordance with the general principles concerning Non-Self-Governing Territories that it had adopted.

39. Turning to the operative part of the draft resolution, Mr. Perera said he felt that a small committee should be set up to study the question. The replies of Portugal had not completely convinced all delegations; moreover, certain legal issues were involved. The sponsors of the draft resolution had deliberately left the composition of the *ad hoc* committee undecided, in the belief that that question could be left for later consultation.

40. The purpose of the draft resolution was to determine whether any of the new Members had any obligations under Article 73 of the Charter. It was true that the General Assembly had not defined the meaning of "Non-Self-Governing Territories", but it had listed certain factors and had asserted its competence to express its opinion on the principles which should guide Administering Members in the matter. It was therefore perfectly in order to set up an *ad hoc* committee to examine the replies of the new Members and determine whether Chapter XI was applicable to them.

41. He felt that the rest of the operative part of the draft resolution should not give rise to much argument.

42. Mr. BOZOVIC (Yugoslavia) said the problem was an important one, since it involved the application of Chapter XI of the Charter. It was in the general interest that the issue should be considered without bias. The international community was concerned with the destinies of the colonies because the very existence of colonialism had often been a threat to peace, and colonial expansion had been the cause of many wars. The international community had tried to regulate that expansion and to safeguard peace; therein lay the origin and purpose of Chapter XI of the Charter.

43. At the beginning of the colonial era, the conflict had been between the various metropolitan Powers. Today, it was the colonies which were rising up against the metropolitan Powers and rejecting the policies of domination and exploitation to which they had been subjected. The international community could surely not avert its eyes from a problem which affected its own security; the connexion between the administration of the territories and the maintenance of peace was too close for that.

44. Certain representatives had asserted that the provisions of Chapter XI of the Charter should apply to all peoples which had not yet attained a full measure of self-government, and not merely to colonies. Since Article 73 of the Charter did not define Non-Self-Governing Territories, the best way of clarifying the issue was to refer to the records of the San Francisco Conference relating to the drafting of the Article in question. Thus,

Marshal Smuts had stated on 20 June 1945 that the principle of trusteeship applied to all dependent peoples, and that a very far-reaching extension had been given to the principle.<sup>1</sup> The delegate of Belgium had welcomed the inclusion in the Charter of Chapter XI, which clearly stated the goals which a number of "colonial Powers" had set themselves for many years.<sup>2</sup> He had added that the great merit of the Charter would lie in its having been drafted while the war was still raging, as a reward for the dependent peoples which had fought so valiantly.

45. The Greek delegate at San Francisco had complained that the expression "peoples which have not yet attained a full measure of self-government" was too vague, and had suggested the insertion of the term "non-metropolitan". The delegate of New Zealand had pointed out at the time that the expression in question did not apply to peoples in the metropolitan area of a State.

46. It thus seemed clear that the duty of transmitting information applied only to the colonial Powers. The representative of Portugal had found it strange that his country should have been taken directly to task (616th meeting), whereas the General Assembly had in the past merely taken cognizance of the list of territories submitted by certain Member States. Since, however, the Assembly had recognized that Chapter XI applied only to the colonial Powers, it had had no reason to consider the replies of the other States. It was true that the lists submitted by certain colonial Powers had failed to mention some of the territories they administered, and that the Assembly had taken no steps in that connexion. However, the Powers concerned had decided to submit information for most of their territories. In any event, he was quite prepared to acknowledge that the Assembly's silence had been a mistake, as witness the present events in Algeria.

47. He had no intention of taking issue with the colonial policy or the Constitution of Portugal. Moreover, Chapter XI in no way encroached upon the sovereignty which the administering countries exercised over their territories.

<sup>1</sup> *United Nations Conference on International Organization*, vol. 8, *Commission II*, p. 126.

<sup>2</sup> *Ibid.*, p. 146.

48. The matter should be considered objectively, as proposed in the draft resolution. The fact that the Charter did not define Non-Self-Governing Territories did not mean that each State could interpret Chapter XI as it saw fit. In his view, a territory administered by a foreign power and permanently subject to special legislation could not be considered to be self-governing.

49. Mrs. Bolton had stated,<sup>3</sup> on behalf of the United States, that no Member State could renounce the right of determining the constitutional status of a territory placed under its sovereignty. He did not disagree; but the General Assembly had the right, for its part, to determine whether or not the constitutional status of a territory was that of an autonomous country.

50. None of the provisions of the Charter could be carried out unless Member States showed good will; it might be noted in that connexion that the United States representative at San Francisco had emphasized the need for giving unreserved support to the principles of the Charter.

51. Lastly, he wondered why the Haitian representative had been interrupted in his statement, when no point of order had been raised in connexion with the statements made by the representative of Portugal and Brazil at the 617th meeting.

52. Mr. BARGUES (France) said that France had never transmitted information on Algeria because that country was not within the category of territories covered by Article 73 of the Charter.

53. Mr. GRIECO (Brazil) said that his statement at the 617th meeting had had no reference to contemporary Portuguese administration, and had therefore not been open to a point of order.

54. Mr. BOZOVIC (Yugoslavia) pointed out that the Brazilian representative had in fact referred in his statement to passages from the Portuguese Constitution.

55. Mr. CHAMANDI (Yemen) expressed surprise at the Portuguese representative's observations regarding the questions put by the representative of Yemen.

The meeting rose at 6 p.m.

<sup>3</sup> *Official Records of the General Assembly, Eighth Session, Fourth Committee*, 326th meeting, para. 83.