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NON-SELF-GOVERNING TERRITORIES

Factors relating to the Application of
Chapter XI of the Charter

("The Idea of the Sacred Trust")

The Idea of the Sacred Trust

I

Document A/AC.35/L.30 contains a number of citations from commentaries on Chapter XI of the Charter. Since its preparation Professor F. van Langenhove, Permanent Representative of Belgium to the United Nations and Professor at the University of Brussels, published in June 1951 a pamphlet entitled "The Idea of the Sacred Trust of Civilization with regard to the less developed Peoples",^{1/}

Reference to the pamphlet was made by the Representative of Denmark during the 1951 Session of the Special Committee on Information transmitted under Article 73 e of the Charter, and a number of representatives expressed the opinion that citations from the pamphlet should be added to the original document.

Accordingly, below are given citations from the pamphlet of Professor van Langenhove.

II

The statement concerning the non-self-governing territories, contained in Chapter XI of the United Nations Charter, refers to the "sacred trust" which those members of the United Nations who administer less developed peoples assume toward them.

The same expression had already figured in the Covenant of the League of Nations. It is not a brand new idea. It has been expressed since the 16th century in legislation and in Spanish publications concerning the Colonies. It appears in England, in the 18th century, in the text of certain decrees and also in parliamentary debates. From 1754 on, the British Government treats the North American territories as held in trust, and the tribes as nations put under its protection.

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The idea which found its way into the Covenant and the Charter, goes back to the very beginning of modern civilization. It is primarily derived from the power

^{1/} Belgian Government Information Centre, New York.

which a government representing a superior civilization exercises over certain ethnical groups belonging to an inferior civilization. Some of these groups live in nearly complete isolation and retain their very primitive character. Others, although having contacts with the foreign authority which assumes the administration of the territories, remain within the framework of their own institutions and of their local customs. Still others have liberated themselves from these institutions and customs, but have not yet reached a more advanced social organization, nor have they the ability to govern themselves according to the foreign administration's rules. These diverse stages of evolution can be found, completely identical in character, among the populations that live within the borders of independent states as well as among those which live outside these borders in dependent territories.

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The States which enjoy a superior civilization have duties toward the populations of inferior civilization which they administer, whether these populations live within or without the frontiers of the State. These duties, which are rarely contested, are generally recognized by means of internal legislation and administration. They have, moreover, been the object of various international provisions. But, these have only a limited scope and the extent of their application lacks uniformity.

The principle of a "sacred trust of civilization" was expressly referred to in Article 22 of the Covenant of the League of Nations. However, the scope of this article was limited to the mandated territories.^{1/} The idea, however, was again expressed in general terms in Article 23, according to which the members of the League of Nations "undertook to secure just treatment of the native inhabitants of territories under their control". This text, in which has been found the germ of Chapter XI of the Charter, covered all the native populations, both those who live within the frontiers of independent States and those who live in non-self-governing territories.

^{1/} It should also be recalled that the concept of a sacred trust of civilization is already found expressed in the General Act of Berlin of 1885, and that it was later restated, in an amplified form, in the Convention of St. Germain which revised the Act of Berlin in 1919.

The principle has been more explicitly stated in the declaration regarding non-self-governing territories, which forms Chapter XI of the United Nations Charter. But the text is obscure. It does not indicate clearly what is meant by "territories whose peoples have not yet attained a full measure of self-government." Interpretation of these terms presents grave difficulties, as has been pointed out - from a different stand-point - in particular by the U.S. Tariff Commission.

According to this commission, "the subtle and constantly changing political relations of the world's territorial divisions defy simple or hard and fast definition and classification."^{1/} The Commission quotes, as an example, the cases of the Isle of Man, of the Channel Islands, of Algeria, on the one hand, and, on the other hand those of Alaska and Hawaii. Mr. Duncan Hall underlines the ambiguity of the terms of the Charter as follows: "This has no clear meaning; and might be interpreted in a number of different ways - including an interpretation which would exclude all territories regarded as incapable, by force of circumstances, such as location, size, resources, of attaining full self-government."^{2/}

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A good deal of the ambiguity of the text, as Duncan Hall has shown, derives from the fact that a different meaning is given to colonial expansion according to the technique which it follows. "One party, for example, thinks in terms of expansion by sea lanes, and the other by land roads or inland waterways. One regards the difference between these ways of expansion as irrelevant and the other as fundamental. The peoples in great continental areas such as the United States, Canada, Australia, and Russia, in their expansion into border territories at the expense of primitive peoples, built up on their margins temporary conditions of colonization and dependency. But in the end the border dependencies have tended to be assimilated and to be treated as an integral part of the national or federal state."^{3/} From the standpoint of the "sacred trust" assumed toward the

^{1/} United States Tariff Commission, Colonial Policies, Washington Government Printing Office, 1922, p. 6 to 10, quoted by Duncan Hall, op. cit. p. 41.

^{2/} Duncan Hall, op. cit. p. 43.

^{3/} " " " " " "

populations of inferior civilization, how can one justify an interpretation of the Charter which stresses its principle with regard to the Eskimos if they live in Alaska and in Greenland, but not when they inhabit Canada? Toward the Indians who live in British, French, and Dutch Guyana, but not toward those who inhabit Brazilian and Venezuelan Guyana?^{1/} The only distinction one can establish between these different groups of Eskimos or of Indians is that colonization for some of them proceeds by land according to territorial continuity, for others, by sea, following territorial discontinuity.

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It is not without interest, on the other hand, to note that when the General Assembly of the United Nations requested the Economic and Social Council to study the problems of slavery, it did not think of excluding the populations which live within the borders of independent states.

Within the limits of its competence, the International Labour Organisation has, for several years, concerned itself with the fate of native populations. The organization devotes its attention both to those who live within the frontiers of independent states and to those who live in dependent territories.

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The Convention of 1936 concerning the regulation of certain special systems of recruiting workers, and the Conventions of 1939 concerning the penal sanctions for breaches of contracts of employment by indigenous workers and the regulation of written contracts of employment of indigenous workers, consider under this term "workers belonging to or assimilated to the indigenous populations of dependent territories of members of the Organization and workers belonging to or assimilated to the dependent indigenous populations of the home territories of members of the Organization". According to the Report of the International Labour Organization submitted to the 20th Session of the General Conference held in Geneva 1936, "the 1936 Convention is intended to regulate the recruiting of 'Native Labour', and this labour is that of the indigenous populations of colonial

^{1/} Cf. P. Ryckmans "Dominer pour servir", 1948, p. 33.

territories or of self-governing countries where the indigenous populations are not in enjoyment of citizen rights but are in a position of dependency or tutelage".^{1/}

There are no States having on their territory ethnical groups of backward civilization who do not recognize, at least in principle, that they have a responsibility toward them. The American States recognize this, not only individually, but collectively; not only on the national, but on the international plane.

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The international provisions concerning the responsibilities of States of superior civilization toward the populations of inferior civilization which they administer, can therefore be classified in three categories; those included in the Charter of the United Nations, and principally in its Chapter XI; those set forth by the International Labour Organisation; those laid down by the American States.

Among these provisions, the broadest in scope are those which are contained in Chapter XI of the Charter. In a general way, they concern the political, economic, social and educational advancement of the peoples which have not yet attained a full measure of self-government, the development of self-government and of their free political institutions, their just treatment, and their protection against abuses. The text does not indicate clearly which populations are meant. Up to the present, the interpretation which has been accepted limits its application to native populations who live outside the frontiers of the states of which they are dependent. Such a limitation is artificial. One can wonder why a wider bearing has not yet been recognized for Chapter XI. For the principles which it contains do not offer any difficulties and are almost universally recognized. Most of the United Nations have long since accepted them in the national sphere. Many of them have included them either in international conventions of a regional character or in international conventions relating especially to labour conditions. On the other hand, the sovereignty of States is

^{1/} Recruitment of Indigenous Workers for Agriculture and Mines, Geneva, International Labour Office, 1950, p.1.

not in question. For, even admitting that Chapter XI creates obligations, no one could seriously contend that the Organization is competent to control their execution, as is the case, on the contrary, for the trusteeship regime provided in Chapters XII and XIII.

If care is taken not to allow any ambiguity to subsist in this regard which might disquiet Governments and public opinion, any fair minded person will recognize that it is in the interest of the native populations of inferior civilization that the problems concerning their future should be studied in the broadest spirit. Whether these populations live within or without the frontiers of the States which administer them, they give rise to the same problems. One cannot dissociate them without being narrow-minded or endangering their solution. The responsibilities which derive from them are of the same nature. From the human standpoint, they impose the same duty, the same "sacred trust of civilization".