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COMMITTEE ON INDIGENOUS PARTICIPATION

STATEMENT TO THE COMMITTEE BY MR. MIGUEL RAFAEL URQUIA,
REPRESENTATIVE OF EL SALVADOR

New York, 13 June 1952

1. The delegation of El Salvador has carefully examined General Assembly resolution 554 (VI) of 18 January 1952 and the record of the discussions in the Fourth Committee of the General Assembly at its sixth session on the joint draft resolution submitted by Cuba, Ecuador, Egypt and India on "Participation of the indigenous inhabitants of the Trust Territories in the work of the Trusteeship Council". The joint draft resolution, modified by an amendment proposed by Denmark and Norway, was approved in Committee by 33 votes to 4, with 4 abstentions and was subsequently adopted by a large majority as General Assembly resolution 554(VI).
2. In the resolution the General Assembly considers, inter alia, that the direct association of the indigenous inhabitants of the Trust Territories in the work of the United Nations and of the specialized agencies is an effective means of promoting the progress of the indigenous inhabitants of those territories towards a position of equality with Member States of the United Nations and invites the Trusteeship Council to examine the possibility of associating the inhabitants of the Trust Territories more closely in its work and to report the results of its examination of this problem to the General Assembly at its seventh regular session.
3. We have also studied with particular attention the draft resolutions on the subject submitted to the Trusteeship Council by the delegations of the Soviet Union and Iraq and the views expressed by most of the members of the Council at the meetings held on 3 and 26 March 1952.

4. As my fellow-representatives will no doubt recall, it was the delegation of El Salvador which proposed at the second meeting the establishment of a committee of six members to study the possibility of associating the inhabitants of the Trust Territories more closely in the Council's work and to report on its studies to the eleventh session of the Council. The study was to be made in the light of General Assembly resolution 554 (VI), the observations made by members of the Council during the discussion of the matter in the Council and any observations which the Administering Authorities might wish to make. This final paragraph was added on the proposal of Prince Wan Waithayakon, who was then the representative of Thailand on the Council.

5. We are all in duty bound to give our most careful consideration to the question raised by the General Assembly in resolution 554 (VI) because it concerns a delicate and far-reaching problem, so much so that Mr. Pignon, the representative of France on the Council, whose experience and ability we all admire, told us at the meeting of 26 March that in his view the resolution was the most important of the many adopted at the sixth session of the General Assembly.

6. If we refer to the records of the Fourth Committee -- the source from which this material is taken -- we find that at the meeting held on 4 January 1952 Mr. Perez Cisneros, the representative of Cuba, in explaining the background of the joint draft resolution submitted by Cuba, Ecuador, Egypt and India, referred in the first place to the explicit provisions of Article 76 b of the Charter and to the Trusteeship Council's rules of procedure which allow the Administering Authorities to appoint special representatives who can participate in the discussions of the Council without the right to vote. He thought that it was unfair to grant that privilege to one side only and that it was only reasonable that the Council should be informed of the opinion of the peoples administered as well as of the administrators. The procedure would have the additional advantage of preparing the indigenous populations to assume their responsibilities at the international level.

The representative of Cuba said that it would not be the first time that the principle of the participation of associate members had been recognized in the United Nations. To support that statement, he mentioned the constitutions of the Economic Commissions for Latin America and for Asia and the Far East in which provision was made for the participation of non-self-governing territories as associate members. He also mentioned the constitutions of the World Health
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Organization, the United Nations Educational, Scientific and Cultural Organization and others, which contained similar provisions.

The Cuban representative said that, if the principle of participation of associate members in the work of the Trusteeship Council was accepted, three questions would arise: the legal status of the associate members, the conditions under which the associate members would be able to take part in the discussions, and what bodies in the Trust Territories would be able to send representatives as associate members and how many they would be allowed to send. With regard to the first point, he felt that associate members should have the same legal status as the special representatives and should be regarded as their counterpart; with regard to the second point, he thought that they should be allowed to speak during the examination of the annual reports on their own Territories, except during discussions leading to specific conclusions regarding those Territories, as in the case of the special representatives; with regard to the third point, he felt that one representative from each Territory would be enough. The representative would be appointed by an electoral college or other similar body, such as the African members of the Legislative Council in Tanganyika, the conseils de pays or the conseils de chefferie in Ruanda-Urundi, etc.

Mr. Mani, the representative of India, one of the sponsors of the joint draft resolution, expressed similar views at the meeting held on 4 January.

7. Having summarized the views of the sponsors of the draft resolution, I should like also to recapitulate the objections raised at the meeting of the Fourth Committee on 4 January by two representatives of the Administering Authorities, Mr. Ryckmans of Belgium and Sir Alan Burns of the United Kingdom.

Mr. Ryckmans said that there was a very great difference between the regional economic commissions, WHO, UNESCO, etc., in which the associate members represented territories as persons in international public law, and the Trusteeship Council, in which the associate members would be representatives of the peoples of the territories and not of their governments; the result would be the presence of a representative of the people of a country side by side with the country's governmental representative.

Sir Alan Burns, for his part, said that the Administering Authorities, in accounting to the Council for their actions, were entitled to enlist the help of special representatives who, as and when the territories developed, might be chosen from among the indigenous inhabitants or might call upon them for assistance; obviously, however, that was not the kind of assistance provided for

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in the joint draft resolution which was intended rather to associate in the work of the Council persons holding opinions which differed from those of the Administering Authorities.

The inhabitants of the Trust Territories were, he said, already able to express their views when they were at variance with those of the Administering Authorities by means of the right to petition and of the visiting missions which carried out investigations in the Territories and consulted the populations with regard to their position and prospects.

Finally, he referred to practical difficulties such as the choice of the representatives of the indigenous peoples in territories like Tanganyika where a population of seven million was made up of a great number of races and tribes.

8. It is important to note that, in spite of the objections I have mentioned, and others raised by the representatives of France and of Australia, the joint draft resolution, with a minor amendment proposed by Denmark and Norway, was adopted in the Fourth Committee by 33 votes to 4, with 4 abstentions.

It is a matter of interest to me to note that of the 33 votes in favour, 9 were cast by Latin American countries, Cuba, Ecuador, El Salvador, Mexico, Uruguay, Argentina, Bolivia, Brazil and Chile.

The representative of Guatemala was unable to take part in the vote, but expressed complete agreement with the resolution which was adopted.

Mr. Sayre, the United States representative who was until recently the representative of the United States on this Council, said that his delegation had voted for the resolution, because it expressed the wish that the inhabitants of the Trust Territories should be more closely associated in the work of the Trusteeship Council and at the same time did not restrict the Council's right to seek any practical means of attaining that objective. The United States vote, he said, should not be interpreted as signifying that the United States was committed to the support of any particular form or method of associating the indigenous inhabitants in the work of the Council.

9. During the discussion of the item on the "participation of the indigenous inhabitants of the Trust Territories in the work of the Trusteeship Council" at the meeting of 3 March and in the course of the examination of a draft resolution introduced by the USSR representative, some speakers expressed views favourable to the acceptance of the purposes underlying General Assembly resolution 554 (VI) but others put forward and defended points of view entirely opposed to those of the majority of the Members of the General Assembly.

10. The representative of France, Mr. Pignon, whose statement that the resolution before the Trusteeship Council seemed to him the most important of all the resolutions adopted by the General Assembly at its sixth session I have already quoted, considered that the provisions of the resolution were incompatible with the terms of the Charter; he said that the methods to be used to achieve the purposes of the Trusteeship System had been specified since the Charter itself clearly defined in Chapters XII and XIII the composition and competence of the organs responsible for supervising the operation of the Trusteeship System and the means which they should use to carry out that task. The powers of a principal organ of the United Nations such as the Council could be modified only in accordance with the procedure prescribed in Article 108 of the Charter.

The French representative felt that there was no basis for the analogy drawn by the Cuban representative, Mr. Perez Cisneros, in Paris, between the special representatives of the Administering Authorities and the associate members; he also rejected as unjustified the comparison which Mr. Perez Cisneros had tried to establish between the practice of the specialized agencies or the regional economic commissions and that of a political organ such as the Trusteeship Council.

Mr. Pignon, after referring to various other considerations which had been mentioned in the Fourth Committee, said that the provisions of resolution 554(VII) were in fact the result of a misunderstanding of one of the most important principles of public and international law; peoples or territories could not have any representation other than that which was exercised by the authorities constitutionally vested with that power. He added that there had been a mistaken idea of the nature and duties of the Council; the Council was regarded by some as a tribunal which dealt with disputes between the Administering Authorities and the peoples administered, and handed down judgments after hearing each of the parties involved. That idea, he said, was contrary to the letter and spirit of the Charter, under which the Council was a political organ and not a tribunal.

11. As may be seen in the record of the meeting held on 3 March, Mr. Forsyth, the Australian representative, who is now Vice-President of the Council, also made a number of points against the General Assembly resolution.

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He said that the composition, functions, voting and procedure of the Trusteeship Council were laid down in Chapter XIII of the Charter, which made no provision for the direct participation of the indigenous inhabitants in the work of the Council.

He pointed out that the Administering Powers exercised their authority under the Trusteeship Agreements; their rights and duties were defined in two international instruments, the Charter and the Trusteeship Agreement relating to the Territory under their administration, and neither of those instruments imposed any obligation on the Administering Authorities to secure the participation of the populations they administered in the Council's work, apart from the association arising out of the provisions concerning visits and petitions.

He also noted that the Council's rules of procedure contained no provisions imposing such an obligation on the Administering Authorities.

12. I have considered it necessary to summarize the main arguments for and against General Assembly resolution 554 (VI), which have been brought forward in the Fourth Committee in Paris and here in the Council, because it is obvious that we must weigh these arguments carefully since the proposal of the delegation of El Salvador, which resulted in the establishment of this special committee, provides, as you no doubt remember, that the possibility of associating the inhabitants of the Trust Territories more closely in the work of the Council is to be studied in the light of the General Assembly resolution, the observations made by various representatives when the question was discussed in the Council and any observations that may be made by the Administering Authorities, which include the Governments of Australia, Belgium, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

13. In Paris the representative of El Salvador voted for the joint draft resolution and my delegation hopes that this Committee and the Council will do its utmost to find a formula which, without impairing the rights of the Administrative Powers or failing to respect the Charter and the Trusteeship Agreements, will, by securing the direct collaboration of the indigenous inhabitants of the Trust Territories, contribute to the objective of promoting the political, economic, social and educational advancement of those inhabitants,

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and their progressive development towards self-government or independence, on which the General Assembly resolution was based and which is one of the fundamental objectives of the International Trusteeship System.

14. My delegation considers that both the sponsors and supporters of the resolution, and its opponents -- I am referring of course to the most vehement on both sides -- have unnecessarily taken up extreme and apparently irreconcilable positions, when in reality this is a matter in which it is possible to reach a compromise which will be of benefit to the indigenous inhabitants and to the Administering Authorities, as well as to the United Nations, under whose authority the Trusteeship System has been set up and is maintained.

15. In our opinion, it is possible for members of the indigenous population of each Territory to collaborate with the Council in the examination of the annual reports of the Administering Authorities, without placing them on the same footing as the special representatives of the Administering Authorities, without considering the Trust Territories or indigenous inhabitants who may co-operate in the Council's work as associate members of the Council, and what is even more important, without granting those indigenous inhabitants the status of representative of the Territories or of sections of the population of those Territories.

16. Persons chosen by the Trusteeship Council from among the leading members of the indigenous population of each Territory would be of great assistance in examining the annual reports and would at the same time acquire knowledge and experience which they could pass on to their contemporaries and which would prepare them to exercise important functions, thus helping to achieve the purpose of the General Assembly resolution of promoting the progress of the indigenous inhabitants of the Trust Territories towards a position of equality with the peoples of Member States of the United Nations.

17. It would be necessary to discard from the argument of the Cuban representative, Mr. Perez Cisneros, the points which so alarmed the representatives of the Administrative Authorities -- the participation of indigenous inhabitants as associate members, the granting to the indigenous inhabitants of an international status identical with that of the special representatives, as the counterpart of the latter, and the appointment of the

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indigenous representatives by electoral colleges or by some other method which would necessarily mean that they would have a representative character.

However, it would be impossible to set aside the incontestable point that, as the Authority administering a Territory is able to make itself heard in the Council through a special representative with adequate knowledge of the matters dealt with in the report so, the indigenous inhabitants, as the persons being administered, ought to be able to express their opinions in the Council when a report in which they are the parties chiefly interested is being examined.

18. The argument of the French representative, based on public and international law, that peoples or territories cannot have any representation other than that exercised by the authorities constitutionally vested with that power cannot be used against the participation of the indigenous inhabitants in the form and spirit suggested by my delegation; the argument is not valid, first, because we refrain from conferring representative status on those indigenous inhabitants who may attend the Council, and second, because even if they are regarded as representatives of their respective indigenous populations, we should have only one representation, and that the best qualified, since in the case of the examination of the annual report on the administration of a Trust Territory submitted by an Administering Authority, it can hardly be said that it -- in such an examination -- legitimately represents the Trust Territory and the interests of its inhabitants. The submission of the report is an act of the Administering Authority and not an act executed in representation of the Territory administered; it is an act justifying its conduct as the power responsible for the administration conferred upon it by the United Nations.

In this connexion, I should like to remind my colleagues that under the principal law of a great many countries, when a person acting as guardian gives an account of his stewardship, although he is normally the legal representative of his ward, he ceases to be so in this special case, and the court either appoints a special representative for the ward to defend his interests, or the Public Legal Department acts as his representative.

Thus, even supposing that the indigenous inhabitants came to the Council to represent the peoples to whom they belong -- which is of course not the case under our proposal -- there would be no need for the Belgian representative,

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Mr. Ryckmans, to be alarmed, because although the representative of the indigenous population of a Territory and the representative of the Government of that Territory would be here at the same time, the latter would not be representing the population but only the Government, and so the legal difficulty mentioned by the Belgian representative in Paris would not arise.

19. It will have been seen already that our method of approaching the problem of the participation of the indigenous inhabitants in the work of the Trusteeship Council, eliminates many of the objections raised against the Assembly resolution, and we can also state, without further explanation, that it also eliminates the practical difficulty pointed out by Sir Alan Burns and other representatives, namely, that it would be very difficult to arrange for the election of indigenous representatives in thickly populated Territories with many different tribes, such as Tanganyika, since it would be the Trusteeship Council which would select the indigenous inhabitants to participate in the work of the Council.

It remains to be seen whether, despite the method suggested by my delegation, the legal arguments raised by Mr. Pignon and Mr. Forsyth can be accepted as valid arguments against the Assembly resolution.

20. It is true that the Charter, as the French representative said, lays down the methods to be followed in order to achieve the purposes of the International Trusteeship System; but it is also true that this provision is drafted in such general terms that it does not prevent either the Assembly or the Council from using methods which will help them to carry out their duties. This being so, it cannot be argued, as Mr. Pignon sought to do, that by allowing the indigenous inhabitants to co-operate with the Council in the examination of the reports, the powers of the Council would be amended by a procedure other than that provided for in Article 108 of the Charter, for the simple reason that these powers would remain the same, since they would not have been amended in any way, and there would therefore be no legal basis for the argument that the provisions of the Assembly resolution are incompatible with the terms of the Charter.

21. In order to admit the indigenous inhabitants to direct participation in the Council during the examination of the annual reports, to act simply as collaborators, with the right to speak, of course, but without the right to vote, and with the right to participate in all discussions save those directed to specific conclusions concerning their respective Territories, in which the special representatives are not allowed to participate either (rule 75 of the Council's rules of procedure), in order, then, to admit them to such participation, there is no need to regard the Trusteeship Council as a kind of tribunal called upon to settle disputes between the Administering Authorities and the peoples administered, after hearing the representatives of both parties, which in the opinion of the French delegation, is a mistaken conception of the nature and mission of the Council, which is a political organ and not a tribunal.

Moreover, the Council itself and its subsidiary organs often hear indigenous inhabitants who have sent petitions and the representatives of the Administering Authorities, and take decisions based on the written or verbal evidence of both parties, without giving grounds for the view that this practice is improper because the Council is thus regarded as a tribunal and not as a political organ.

22. Mr. Forsyth is right when he says that there is no provision in the Charter, in the Trusteeship Agreements, or in the rules of procedure of the Council, which provides for or requires the direct participation of the indigenous inhabitants in the work of the Council; however, it is also undeniable that participation on the lines suggested by the delegation of El Salvador not only does not conflict with the Charter and the instruments mentioned, but is in perfect harmony with the Trusteeship System generally. As Sir Alan Burns wisely pointed out, the inhabitants of the Trust Territories are enabled to express their views, where these differ from those of the Administering Authorities, through the right of petition and the Visiting Missions which investigate conditions in the Territories themselves and consult the inhabitants on their position and future prospects. If this opportunity to state their views exists without being explicitly laid down in the Charter, there is no reason of principle against giving the indigenous inhabitants an opportunity of taking part in the work of the Council during the

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examination of the annual reports, in a way which would associate them more directly with the Council's work, in accordance with the aim of the General Assembly as stated in its resolution of 18 January 1952.

23. It is well to recall once more, in connexion with the legal arguments advanced by many of my colleagues who are opposed to the Assembly's resolution, that a jurist of the stature of Mr. Sayre, who is also the representative of one of the Administering Powers, found no insuperable obstacle in the way of supporting this resolution and indeed said on the contrary that it expressed the Assembly's wish that the inhabitants of the Trust Territories should be more closely associated in the work of the Council, without restricting the Council's right to seek any practical means of attaining that objective.

24. Before concluding this long statement, I should like to say that my delegation does not regard either the Soviet draft resolution or the Iraqi draft resolution as acceptable.

According to the first, the Council would declare that the populations of the Trust Territories have the right, in the name of their social, cultural and educational organizations and of their representative organs of self-government, if such exist in the Trust Territories, to send their representatives to participate without vote in the consideration by the Council of the Administering Authorities' annual reports and any other questions relating to the Territories. We consider that this statement is not sufficiently clear and, in any case, it seems to us to be outside the competence of the Council, it would give rise, not without justification, to many of the objections made in the Fourth Committee and in the Council itself against the Assembly resolution.

As regards the draft resolution submitted by the Iraqi representative, Mr. Khalidy, now President of the Council, under which the Administering Authorities would be recommended to associate, on their own initiative or at the request of the Council, members of indigenous organizations, of political, economic, social or cultural character with the work of the Council, either as part of their delegations or in any other form which they might deem desirable, my delegation feels that a resolution in these terms would not contribute to the achievement of the purposes proposed by the General Assembly, since the indigenous inhabitants would be incorporated in the Administering Authorities delegations or

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appointed by them to take part in the Council's work; they would thus be in a position which would not allow them to exercise the necessary and indispensable freedom of action which the Assembly had in mind when it adopted resolution 554(VI).

25. It is clear from what I have said on behalf of my delegation, not as Chairman of this Committee, that we propose that the indigenous inhabitants should participate in the work of the Council quite separately from the delegations of the governments which administer the Trust Territories, and that there are many points of agreement between our position with regard to this problem and the position adopted by the delegation of the Dominican Republic.

26. Without for the time being making any concrete proposal, I shall sum up my delegation's views by stating that it seems to us to be perfectly possible to allow the indigenous inhabitants to participate in the work of the Council, by the suitable selection of persons outstanding among the indigenous population in each Territory, for their capacity and other personal qualities. The selection would be made by the Trusteeship Council itself, which would take into account information from the Administering Authority, the Visiting Missions, any subsidiary organs of the United Nations attached to such Territories, indigenous, political, economic, social or cultural organizations, and any other reliable source.

An indigenous person appointed in this way for each Trust Territory would be entitled to take part, with the right to speak but without the right to vote, in the examination and discussion of the Administering Authority's annual report, except in discussions directed towards specific conclusions concerning the Territory in question.
