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STANDING COMMITTEE ON PETITIONS

SUMMARY RECORD OF THE FIVE HUNDRED AND FIFTY-SEVENTH MEETING

Held at Headquarters, New York,
on Thursday, 13 July 1961, at 2.50 p.m.

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PRESENT:

Chairman:

Mr. BACON

United States of America

Members:

Miss TENZER

Belgium

Mr. YIN

China

Mr. NATH

India

Mr. ANTONOV

Union of Soviet Socialist Republics

Mr. SANKEY

United Kingdom of Great Britain and
Northern Ireland

Also present:

Mr. CHANT

Special Representative of the
Administering Authority for the
Trust Territory of Tanganyika

Mr. FORSYTHE

Australia, Committee on
Classification of Communications

Secretariat:

Mr. CHACKO

Secretary of the Committee

EXAMINATION OF PETITIONS CONCERNING TANGANYIKA (T/C.2/L.442 and Add.1) (continued)

At the invitation of the Chairman, Mr. Chant, Special Representative of the Administering Authority for the Trust Territory of Tanganyika, took a place at the Committee table.

IV. Petition from Mr. G.L. Allaway (T/PET.2/241)

In reply to questions from Mr. NATH (India), Mr. CHANT (Special Representative) said that the rights of occupancy of land had been revoked in certain cases because the farmers had defaulted with respect to one or other of the obligations they had contracted, including that of clearing and sowing a certain area of land each year.

Mr. ANTONOV (Union of Soviet Socialist Republics) inquired whether the Tanganyika Government exercised total control over the land leased in that way and the rent charged.

Mr. CHANT (Special Representative) said that it did. The land granted on short-term leases was part of the public land; the rent charged was just and fair and indeed, generous.

The CHAIRMAN suggested that the Committee should draw the petitioner's attention to the Administering Authority's observations.

It was so decided.

V. Petition from the sons of the late Prince Lwabuyango of Bukoba District (T/PET.2/242)

In reply to a question from Mr. NATH (India), Mr. CHANT (Special Representative) said that, according to the custom of the Buhaya tribe, inheritance followed the paternal line and the sons of Sultan Bwogi were consequently his heirs. The petitioners had proved in court that they were the grandsons of the Sultan in question.

Mr. NATH (India) asked why, if that were so, the lawful heirs had not inherited the property of the deceased Sultan; he inquired whether there was a document or whether anything had occurred to establish that the Sultan had renounced his title to property.

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Mr. CHANT (Special Representative) replied in the negative. The events set out in the petition dated back to the end of the nineteenth century, to a time before there had been any European administration; hence it was absolutely impossible to establish what had happened with any certainty.

Mr. NATH (India) wondered how, in that case, the present holders of the property of Sultan Bwogi claimed to be the owners, since they could furnish no material proof of having acquired it legally. It certainly behoved the Administering Authority to take an administrative decision to reopen the matter.

Mr. CHANT (Special Representative) drew the Committee's attention to the fact that the case had been heard before all the courts of the Territory and even, on appeal, by the Governor. On each occasion the plaintiffs had been unable to prove their rights of inheritance. It was therefore impossible to accept the proposal of the representative of India, which would be contrary to the domestic law of the Territory and to natural justice.

Mr. NATH (India) considered that it was intolerable that natural justice should be flouted. It was precisely for that reason that he urged that the petitioners should be given a further opportunity of presenting their case.

Mr. CHANT (Special Representative) recalled that the petitioners had been unable to substantiate their title to the property in the courts or prove that the present ownership of the property was improper. It would therefore not be appropriate for the Committee to propose that the decision of the courts should be set aside.

Mr. YIN (China) asked whether it was true that in the district in question, as in most of Tanganyika, the land was communal property and whether, that being so, the land held by the Sultan Bwogi was not part of communal property.

Mr. CHANT (Special Representative) stated that the land in question was held in the form of personal property under a system peculiar to the district of Buhaya. The land could not have reverted to the tribe because it was inheritable.

Mr. SANKEY (United Kingdom) pointed out that the present Chief of the tribe, who was recognized by the people and by the Government, had also to be protected. The petitioners had lost their case in all the courts of the Territory. The United Nations was not a court of appeal. Justice had been done; the Committee should therefore act prudently and bear in mind the decisions arrived at by the courts of the Territory.

Mr. NATH (India) said that he still hoped that the Committee would study the matter. He was surprised that the onus of proof of the validity of their title did not lie with the persons who held the property. However that might be, he would not go so far as to request that the legal decisions should be set aside but he pointed out that any court could reconsider its decision. The question was who could induce it to do so; in his opinion it should be the Administering Authority itself.

Mr. CHANT (Special Representative) assured the Committee that the plaintiffs had been unable to convince the courts that they were in the right. The appeal to the Governor had led to an inquiry which had confirmed the court decisions and there was no other way in law of reopening the case. If the Administration stepped in, it would be endangering not only the rights of the present Chief but also the confidence of the public in the binding nature of legal decisions.

Mr. SANKEY (United Kingdom) thought that there was no room for compromise. It was a matter of either leaving things as they were or dispossessing the present occupants, thus reversing the decisions of the courts.

Mr. NATH (India) said that he was unable to ignore the fact that the lawful heirs were not in possession of the property which should belong to them. He thought that the courts could reconsider their decision without danger if new factors were brought to their knowledge.

Mr. CHANT (Special Representative) stated that neither the Administering Authority nor the Tanganyika Government could contemplate reversing the decisions of the courts.

Mr. YIN (China) drew attention to the importance the Trusteeship Council attached to the separation of the executive and the judiciary. According to the principles laid down in rule 81 of the rules of procedure it was scarcely possible to contemplate administrative intervention to bring about the reconsideration of a judgement.

Mr. NATH (India) asked whether the case could be reopened by judicial means.

Mr. YIN (China) asked the Special Representative if a new appeal would be admissible in the event of the petitioners being able to provide any fresh evidence.

Mr. CHANT (Special Representative) replied that that was impossible, since every means of recourse to legal proceedings had been exhausted. In reply to a question from the representative of India, he said that under the laws of Tanganyika the burden of proof in an action for the recovery of property lay with the plaintiffs. Their claim had been rejected because they had been unable to prove their rights.

Mr. NATH (India) repeated that, in all fairness, the courts should review the case. He felt that the Administering Authority should find a way of arranging that.

Mr. ANTONOV (Union of Soviet Socialist Republics) wondered whether, when independence was achieved, the new Government would accept the laws of the Administering Authority or would adopt new ones, which would perhaps alter the situation.

Mr. CHANT (Special Representative) doubted whether the new Government would want to alter the judicial institutions.

In reply to a further question from Mr. ANTONOV (Union of Soviet Socialist Republics), Mr. CHANT (Special Representative) said that the present Government would hand over to a Governor-General, who would take decisions on the advice of the Prime Minister.

Mr. NATH (India) pointed out that rule 81 did not prevent the examination of petitions when there was a conflict between the legislation in force and the rights embodied in the United Nations Charter, a conflict which the Administering Authority could resolve by introducing new legislation if necessary. The Committee could leave it to the wisdom, ingenuity and energy of the Administering Authority to consider taking some suitable action.

The CHAIRMAN proposed that, in order to respect both the rights of the Government of Tanganyika and the principles laid down in rule 81, the attention of the petitioners should be drawn to the observations of the Administering Authority and the latter should be requested to transmit to the Government of Tanganyika the summary record of the present meeting.

It was so decided.

The meeting was suspended at 3.50 p.m. and resumed at 4.35 p.m.

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VI. Petition from Mr. Anton Weber-Salim (T/PET. 2/243 and Add.1)

Mr. CHANT (Special Representative), replying to questions from Mr. NATH (India), said that the laws of Tanganyika permitted marriages between Europeans and indigenous inhabitants, that such marriages, although they sometimes raised problems, were nevertheless quite frequent and generally happy and that the petitioner had no police record in Tanganyika. He did not know whether that was the case in Uganda.

Mr. NATH (India) asked, on the basis of that information, why the authorities, who were prepared to allow the petitioner's wife and children to return to Tanganyika, would not allow the petitioner to return also, subject to the taking of necessary measures against him if he engaged in any criminal activities.

Mr. CHANT (Special Representative) said that the Government of Tanganyika had not yet received an application in due form for the cancellation of the prohibition and the granting of an entry permit. In spite of the doubts to which the petitioner's past conduct might give rise, he thought it probable that the Government would be prepared to consider his application favourably. In reply to questions from the representative of India, he said that the Government would not prejudge the substance of the case but would have to take into account both the file of the person concerned and his promise to be a useful citizen. The Government of Tanganyika was not trying to separate families but only to prevent the immigration of undesirable characters.

Mr. NATH (India) proposed that the Committee should draw the attention of the petitioner to the need to submit an application in due form.

Mr. CHANT (Special Representative), replying to two questions from the representative of the USSR, said that the problem of immigration was the responsibility of the Ministry of Foreign Affairs of Tanganyika and that the necessary forms would be sent to the petitioner when his formal application had been received.

The CHAIRMAN proposed that the Committee should draw the attention of the petitioner to the observations of the Administering Authority, taking into account the remarks of the representative of India.

It was so decided.

VII. Petition from the Bahaya Coffee Planters Association (T/PET.2/244 and Add.1)

The CHAIRMAN asked the members of the Committee whether they had any observations to make on the subject of petition T/PET.2/244 and Add.1.

Mr. NATH (India) recalled the text of paragraph 6 of Trusteeship Council resolution 202⁴ (XXVI), adopted on the subject of a similar petition, and proposed that the Committee should request the Administering Authority to reconsider its decision in the light of that resolution.

After a brief exchange of views, in which Mr. NATH (India) and Mr. YIN (China) took part, the CHAIRMAN proposed that the Committee should express the hope that the Administering Authority would reconsider its position in the light of Trusteeship Council resolution 202⁴ (XXVI) and that the cheque enclosed with the petition should be returned to the petitioner.

It was so decided.

VIII. Petition from Mr. Latham Leslie-Moore (T/PET.2/245 and Add.1)

Mr. SANKEY (United Kingdom) observed that the petition appeared to be a joke which should not be taken too seriously.

Mr. ANTONOV (Union of Soviet Socialist Republics) said that he was of the same opinion but would like to know to whom the land of which the petitioner spoke belonged and why the Governor had given it to him.

Mr. CHANT (Special Representative) said that it was freehold property created by the Germans in 1905 and purchased by Mr. Leslie-Moore in 1942.

The CHAIRMAN suggested that the Committee should take no action on the petition.

It was so decided.

IX. Petition from Mr. Jackson Lwendekwe (T/PET.2/246)

Mr. NATH (India) said that he realized that it was difficult for the Administering Authority to give the petitioner any assistance until it had more information. He therefore proposed that the Committee should invite the petitioner to give further details which would make it possible to trace his father's career in the army.

The CHAIRMAN thought that in the meantime the Territory would have become independent and the Committee's responsibility in the matter would have come to an end. He thought that the question could be dealt with by transmitting to the petitioner the observations of the Administering Authority.

In reply to a question from Mr. ANTONOV (Union of Soviet Socialist Republics), Mr. CHANT (Special Representative) said that the petitioner must have been less than ten years of age at the time his father had been mobilized.

Mr. ANTONOV (Union of Soviet Socialist Republics) was afraid that it would be difficult for the petitioner to obtain details of his father's record of service in the army. It appeared certain, however, that the father had been mobilized and he was surprised that the Administering Authority could not trace him in the army records.

Mr. CHANT (Special Representative) said that it had been established that the petitioner's father was a volunteer war worker in a forest camp, which he had deserted. His name did not appear in the records of the two Tanganyika battalions of the African Rifles.

Mr. ANTONOV (Union of Soviet Socialist Republics) thought it strange that the petitioner's name had not been found in the records of the military units but that it had nevertheless been established that he had deserted.

Mr. CHANT (Special Representative) explained that the names of volunteer war workers were not included in the military records.

Mr. NATH (India) proposed that the petitioner should be recommended to seek further details and that he should be referred to the observations of the Administering Authority.

It was so decided.

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EXAMINATION OF A PETITION CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS:
DRAFT 264TH REPORT OF THE STANDING COMMITTEE (T/C.2/L.446)

Paragraphs 1 to 6 were adopted.

The CHAIRMAN put to the vote the draft resolution appearing as an annex to the report.

The draft resolution was adopted by 5 votes to none, with 1 abstention.

Mr. ANTONOV (Union of Soviet Socialist Republics) explained that his delegation had abstained because the written observations of the Administering Authority had not been transmitted to it and that it had consequently been unable to come to any conclusions on the justice of the reasons for which the petitioner had been refused authorization to return to Palau.

Paragraphs 7 and 8 of the report were adopted.

CLASSIFICATION OF COMMUNICATIONS: THIRTIETH REPORT OF THE COMMITTEE ON
CLASSIFICATION OF COMMUNICATIONS (T/C.2/L.445)

At the invitation of the Chairman, Mr. Forsythe (Australia), Committee on Classification of Communications, took a place at the Committee table.

Sub-paragraphs (a) and (b) of paragraph 4 were adopted.

Mr. FORSYTHE, speaking as the representative of Australia, recalled, in connexion with sub-paragraph 4 (c), that his Government had made reservations about the two communications in question: the crimes had been committed on the territory of Papua and did not come under the jurisdiction of the Trusteeship Council. He did not propose to go into the substance of the question but would point out that the death sentences in question had been commuted.

In reply to a question from Mr. SANKEY (United Kingdom), the CHAIRMAN said that it was difficult to know whether the persons sentenced were inhabitants of the Trust Territory or in fact had not the slightest connexion with the Territory.

He proposed that sub-paragraph 4 (c) should be adopted, taking into account the reservations made by Australia.

It was so decided.

Sub-paragraphs (a), (b), (c) and (d) of paragraph 5 were adopted.

Sub-paragraph (a) of paragraph 6 was adopted.

The thirtieth report of the Committee on Classification of Communications was adopted.

The meeting rose at 5.35 p.m.