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CONTENTS

***Chairman*: Mr. Alexis KYROU (Greece).**

The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa (A/2183, A/AC.61/L.6) (*continued*)

[Item 66]*

1. Lord LLEWELLIN (United Kingdom) wished to reply to the question which had been put squarely by the representative of the Union of South Africa at the beginning of the general debate (13th meeting), namely, whether, under the Charter, the Committee was competent to consider the problem of racial relations in the Union of South Africa or to discuss the racial problems of the South African Government. The delegation of the United Kingdom thought that any discussion of the substance of the problem was premature until that question had been answered.

2. At the 381st meeting of the General Assembly, a representative of one of the States that had asked for the item to be included in the agenda had said that the issue was of such great importance that it could not be minimized or set aside by appeal to questions of legal procedure. The issue was, according to him, of such international and human significance that it touched the very foundations of the Charter. Small legalistic matters and arguments could not be allowed to obscure the world significance of the question.

3. What were the implications of those remarks? Did they mean that some provisions of the Charter were of secondary importance and could therefore be brushed aside? That was a view to which the Government of the United Kingdom certainly could not subscribe and to which all other governments should be opposed. No one had a right to declare arbitrarily that certain provisions of the Charter were of secondary importance, especially since the provisions in question concerned fundamental safeguards placed in the forefront of the Charter.

4. Respect for the Charter meant respect for all its provisions. Article 2 of the Charter began with the words "The Organization and its Members . . . shall act in accordance with the following Principles". The first principle was that of the sovereign equality of all Member States. The last principle was that the Charter did not authorize the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any State. The domestic jurisdiction provision was essential to guarantee the sovereign quality of all the Member States. None of the seven principles of the United Nations could be arbitrarily set aside, and it was just as important to respect the limits on the powers of the Organization as it was to uphold its objectives.

5. Those were the reasons why the Government of the United Kingdom thought that the question of jurisdiction in the present instance should be considered dispassionately. The General Assembly was not, in its opinion, competent in the matter, because no one could dispute the proposition that the policy of a State in matters affecting only its own nationals was *prima facie* within its own domestic jurisdiction. That seemed to be admitted even by those States that had asked for the item to be included in the agenda. They alleged that the General Assembly was competent to deal with the matter merely because the policy of the South African Government constituted a threat to the peace and a breach of human rights.

6. The first argument had not been pressed very forcefully and should not perhaps be dwelt upon at too much length. It could be answered by saying that if a real threat to peace did exist, the Security Council could consider the question and take measures under Chapter VII of the Charter as provided in Article 2, paragraph 7.

7. The second argument, too, did not bear analysis. Matters that were dealt with in substance in a treaty and entailed well-defined obligations were obviously no longer essentially within the domestic jurisdiction of

* Indicates the item number on the agenda of the General Assembly.

any party to the treaty. That would have been the case, for example, if the draft covenant on human rights had been signed and ratified by the South African Government. The fact, however, that one of the objectives of the Charter was the promotion of human rights did not mean that questions concerning human rights were no longer within the domestic jurisdiction of States. A very clear distinction had to be made in that connexion between the consideration of problems as they affected Member States generally and the discussion of the policy of a particular State in a particular matter.

8. The delegations alleging that the General Assembly was competent in the matter were, it seemed, relying upon Articles 55 and 56 of the Charter. Under Article 56 all Members pledged themselves to co-operate with the Organization for the achievement of the purposes set forth in Article 55. It should be noted, however, that Article 55 dealt not only with human rights, but also with all economic, social and cultural activities. If the General Assembly was considered in the present instance to be competent under Articles 55 and 56, it must in strict logic be regarded as having jurisdiction to deal with all the matters referred to in Article 55. In other words, no aspect of the internal affairs of a State would be free from interference by the Organization.

9. That was by no means the intention of those who had founded the United Nations. Paragraph 7 had been inserted in Article 2 of the Charter for the very purpose of preventing interference with domestic jurisdiction. That paragraph constituted a safeguard that took precedence over Articles 55 and 56, as well as over Articles 10 and 14 and all other Articles. That provision had been removed at the San Francisco Conference from the chapter on disputes to Chapter I of the Charter so as to make it all-embracing. That had been clearly explained by Mr. Dulles on behalf of the four sponsoring Governments.

10. A matter was not, moreover, taken out of the sphere of domestic jurisdiction merely because it concerned the community of nations. For example, a government's general policy and its financial and trading practices remained within its domestic jurisdiction unless governed by specific treaty obligations.

11. Another argument put forth by some was that even if a matter was within the domestic jurisdiction of a State, the General Assembly was nevertheless free to discuss it and adopt resolutions upon it. An attempt was being made to interpret the word "intervene" as meaning the application of direct forcible pressure. Paragraph 7 of Article 2 could not, according to the United Kingdom delegation, be interpreted in that manner, firstly because of the exception stated at the end of that paragraph, and secondly because it applied to all organs of the United Nations and in particular to the General Assembly and the Economic and Social Council, which could only discuss and make recommendations. "To intervene" meant to come between, interfere, so as to prevent or modify the result. Was that not precisely the aim of the Governments that had asked for the item to be included in the agenda? If there was no intention of coming to a definite conclusion to be embodied in a resolution, there was no point in discussing the item unless the discussion itself was intended to "modify the result".

12. Lord Llewellin referred the Committee to the records of the San Francisco Conference, and particularly to the records of the 9th and 10th meetings of the Executive Committee. At the 9th meeting, Mr. Gromyko, the USSR representative, had pointed out that the draft corresponding to Article 10 of the Charter would permit the General Assembly to discuss matters within the domestic jurisdiction of States. Mr. Evatt, the representative of Australia, had replied at the 10th meeting that the provision of the Charter prohibiting intervention in the domestic affairs of States was a safeguard that applied to all United Nations organs, including the General Assembly.

13. Article 10 of the Charter gave the General Assembly two powers: the power to discuss all matters within the scope of the Charter and the power to make recommendations on those matters. Paragraph 7 of Article 2 removed from the scope of the Charter matters that were within the domestic jurisdiction of States. The General Assembly therefore could neither discuss nor make recommendations on those matters. That limitation, which had been written into the Charter after long deliberation, had been considered necessary at San Francisco and was still necessary. It enabled the Organization to preserve the confidence of Member States and protected it from the failures that it would incur by taking measures it was unable to enforce.

14. The United Kingdom delegation hoped that all members of the Committee would consider the possible repercussions on their own countries of disregarding Article 2, paragraph 7, of the Charter. Almost every State had problems to solve that were related to the purposes set out in the Charter. A solution to those problems should be sought by the democratically elected legislatures of each State. A solution would seldom be furthered by debate in an international organization. Delegations that disregarded the provisions of Article 2, paragraph 7, of the Charter in the present case would never be able to appeal to those provisions in the future.

15. The United Kingdom delegation regarded Article 2, paragraph 7, as a fundamental part of the Charter. It was convinced that the matter under consideration was within the domestic jurisdiction of the Union of South Africa and would vote accordingly.

16. Mr. FRAGOSO (Brazil) thought that the South African representative was perfectly justified in questioning the Committee's competence in the question of race conflict in South Africa. The question of competence was undeniably of primary importance, but it was so complicated that it could not be solved on the spur of the moment. By deciding to include the question of race conflict in South Africa in the agenda and by referring that question to the Committee, the General Assembly had, in one sense, admitted that the Committee was competent to discuss the matter. Whether, however, the Committee was competent to make recommendations on the subject was a different question and the Committee could not come to any decision in that regard except in the light of such definite proposals as might be presented to it.

17. The tendency to make the question of competence a prior question resulted from a false analogy between the General Assembly and the judicial system of the individual States. The Assembly could not consider the

question of competence without first having heard the various arguments in the matter or without having considered the practical measures it might take. It would otherwise run the risk of taking decisions that disregarded the realities of the moment and the action required by a particular problem. Experience showed, moreover, that a general discussion could create an atmosphere favourable to the adoption of a conciliatory solution.

18. The Brazilian delegation would therefore not decide on the question of competence without knowing in advance what kind of draft resolutions might be presented. If it were obliged at the present stage to vote on the question of competence, it would abstain. That attitude was not caused by doubts on any problem that might be put to the vote but by the feeling that as the question of race conflict in South Africa was on the Committee's agenda, the Committee was competent to discuss it in the light of concrete proposals and that only such a discussion would enable it to decide the question of competence in a manner conducive to general understanding.

19. The procedure he envisaged would have the advantage of avoiding, at the very outset, a division of the members of the Committee on a vote which might endow their differences of opinion with a deeper and more permanent character and thus create new difficulties. Further, it should be emphasized that it was not the intention of rule 120 to prevent general debate; it only established the order in which various motions or proposals should be put to the vote. Through a discussion of such proposals the Committee would be in a position to decide whether they fell within the limits of the General Assembly's competence as defined by the Charter.

20. Mr. MUNRO (New Zealand) observed that the sensitiveness shown by many delegations over the question of race relations created a grave risk that the words or silence of some delegations might be misconstrued. It was to avoid any misunderstanding concerning New Zealand's attitude on race relations that he proposed to speak briefly on internal conditions in New Zealand.

21. Although the population of New Zealand was European in its great majority it did contain various racial minorities. While New Zealand's culture, its religious, political and civil institutions, educational system, language and way of life were predominantly European, all of New Zealand's people, of whatever race, enjoyed equally, not merely in theory but in fact and in practice, full political, economic, social and civil rights. That equality was fundamental in New Zealand's life and the Government intended to keep it so. He had stated those facts not for the purpose of comparison with or of judgment upon situations that were inherently different but to help the Committee to understand New Zealand's attitude toward the complaint against the Union of South Africa.

22. When the General Assembly recently considered the question of the inclusion of the problem of *apartheid* in its agenda, the delegation of New Zealand had stated that it was not a matter which demanded the immediate attention of the Assembly, that action taken by the Assembly was unlikely to assist in a solution of the problem, and that there were profound doubts concerning the competence of the Assembly to deal with the question. The New Zealand delegation had therefore voted against the inclusion of the item in the agenda.

23. The New Zealand delegation had already expressed serious doubts concerning the General Assembly's competence to consider the question of the treatment of persons of Indian origin in the Union of South Africa. In connexion with the latter item, however, it had been argued that the existence of the Capetown agreements, concluded between India and the Union of South Africa, was an important factor. Mr. Munro would not express an opinion upon the status of the Capetown agreements under international law as his delegation had always been uncertain concerning those agreements and had felt that the opinion of the International Court of Justice should be sought concerning them. However, the existence of those agreements did appear, *prima facie,* to give some weight to the claim that the treatment of persons of Indian origin in the Union of South Africa was not exclusively the concern of the South African Government. Nevertheless, the fact that the Assembly had taken up the item could not constitute a precedent authorizing it to study the question of racial conflict in the Union of South Africa.

24. There were no international treaties giving a third party a clear and specific contractual interest in South Africa's policies towards its indigenous inhabitants. The segregation measures adopted by the Union of South Africa sought to regulate the affairs of South African nationals and did not touch in any way the affairs of inhabitants of other countries. The arguments advanced to show that those measures fell within the competence of the Union of South Africa seemed therefore highly pertinent. Further, it should be pointed out that some elements in the so-called South African Resistance Movement had been reluctant to seek assistance from other countries because they themselves felt that it was a domestic problem which should be settled within the boundaries of the Union of South Africa.

25. The most important charge against the segregation policies of the South African Government was that they constituted a threat to the peace. If that were the case, the New Zealand delegation would agree that the question demanded the urgent consideration of the General Assembly. However, it should be recalled that every time the Assembly had had occasion to deal with complaints of threats to the peace or of aggressive action, the question concerned hostile action by one Member State against another. That was not the case with the question before the Committee. The New Zealand delegation felt that, whatever opinions might be held concerning South Africa's racial policy, the domestic laws of that country regarding its nationals could not be viewed as constituting a threat to the peace in the sense that would legitimately bring them before the General Assembly.

26. It had also been argued that even if the South African legislation did not constitute a threat to international peace, it still tended to disturb friendly relations among nations and to create tension between those nations, so that it warranted action by the General Assembly. However, an action likely to disturb friendly relations between nations was not in itself a threat to the peace, nor did the existence of international tension in itself constitute a threat to the peace. There had

been many situations in recent years which had been productive of international tension but which had not been considered as being a threat to the peace. Moreover, the mere assertion by certain governments that there was international tension or that international relations were impaired was not enough to warrant action by the United Nations. Such action depended upon the degree to which tension existed and to which friendly relations were impaired.

27. The New Zealand delegation had to express its concern at the possibility that the Organization would lose both standing and effectiveness if it continued to diffuse its efforts with no regard for the limitations which the Charter imposed upon its activity. It urged members of the Committee to be most careful in assessing the degree of seriousness in any situation and in deciding upon the action which the United Nations should take.

28. The New Zealand representative then went on to discuss the proposal that the South African Government's policy of *apartheid* and its attendant legislation should be denounced by the General Assembly as a violation of human rights. His delegation was prepared to concede that flagrant violations of human rights might have been perpetrated and that such violations would justify intervention by the United Nations; however, whatever judgment members of the Committee might have formed of the *apartheid* legislation enacted by the Government of the Union of South Africa, sight should not be lost of the fact that that legislation was a development of certain trends of South Africa's internal policy and that that policy had been generally known to those who at San Francisco had decided to become partners in realizing the purposes and principles of the Charter.

29. The New Zealand delegation took the view that the subject was one which should not be discussed by the General Assembly. It was, however, not unmindful of the perplexities that had often confronted it in the examination of charges involving violations of human rights, or of the different views that had been expressed in the Committee on the competence of the General Assembly in the matter. It, therefore, again expressed its regret that the General Assembly had never asked the International Court of Justice for an advisory opinion on the question of United Nations competence, which had always arisen whenever complaints of violations of human rights were examined.

30. Of course, it could be argued that reference of the question to the International Court of Justice involved some delay and that it was essential for the General Assembly to take immediate action. That argument had been used in 1946 when the Union of South Africa was prepared to have the International Court of Justice examine the competence of the United Nations to deal with the question of treatment of persons of Indian origin in the Union of South Africa. At that time, the General Assembly had preferred to take immediate action which had neither helped to improve the condition of those persons nor removed the uncertainty concerning the competence of the United Nations to deal with the matter.

31. If racial conflict in the Union of South Africa were related to an international instrument in force, there would be less difficulty in judging the competence of the United Nations to deal with it. But as things stood, and until a covenant of human rights had been accepted by a large majority of Member States, it seemed difficult to declare that a particular legislative or administrative measure of a Member State was an infraction of the obligations it had assumed under the Charter. That was another reason why an advisory opinion from the International Court of Justice seemed necessary and it was a disappointment that some delegations, especially those principally concerned in the question, did not seem disposed to ask for such an opinion.

32. The New Zealand delegation was prepared to support any proposal to ask the International Court of Justice for an advisory opinion provided that the terms in which the question was submitted would enable the Court to consider it solely on its legal merits. In the absence of such an opinion, the delegation of New Zealand would adhere to the view that the question was not one with which the General Assembly should deal.

33. What would be the wise course for the Assembly to follow? To reply to that question it was important to decide whether it should seek chiefly to promote an improvement in the existing situation or pursue some flamboyant but ineffective course of action. The New Zealand delegation felt that in the circumstances no improvement was likely to result except from evolution of public opinion within the Union of South Africa. It did not believe that condemnatory speeches or resolutions were calculated to call forth such an evolution.

34. In conclusion, the New Zealand delegation affirmed its adherence to the principle that it was incumbent upon every Member State of the United Nations to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. To go further at the present stage would not serve the best interests either of the United Nations or of the Union of South Africa, on which the task of giving effect to that principle chiefly rested.

The meeting rose at 4.20 p.m.

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