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Chairman: Mr. Miguel Rafael URQUIA (El Salvador).

Treatment of people of Indian origin in the Union of South Africa: report of the United Nations Good Offices Commission (A/2473, A/AC.72/L.10) (*continued*)

[Item 20]*

1. Mr. JOOSTE (Union of South Africa) wished, before replying to the statement made by the Indian representative at the 13th meeting, to restate his Government's legal position in the matter.
2. That position was governed by three facts: first, the item under discussion related to a matter lying essentially within the domestic jurisdiction of South Africa; secondly, it came within the scope of Article 2, paragraph 7, of the Charter, which meant that the United Nations could not deal with it without violating that provision; thirdly, in terms of the same paragraph, South Africa could not legally be required to submit the matter for settlement under the Charter.
3. Those were the reasons why the Union of South Africa had resisted the inclusion of that item on the Assembly's agenda and was continuing to resist its consideration by the United Nations. For the same reasons, it had been unable to recognize the Good Offices Commission, set up under the unconstitutional General Assembly resolution 615 (VII) of 5 December 1952.
4. Passing to the Indian representative's statement which contained inaccurate and misleading allegations, he regretted that he was unable to go into the substance of those allegations since that would compel him to deal with matters essentially within his country's domestic jurisdiction and would be a departure from the legal position to which he had just drawn the Committee's attention.
5. The Indian representative had tried to discredit the South African Government by a hostile interpretation of its motives and intentions as to the manner in which it proposed to implement the Group Areas Act. He had represented applications made to the Government by certain groups of the population with regard to the future application of the Act, as if they were governmental decisions. No decision had been

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

taken as the Indian representative well knew. It should be pointed out that other interested sections had also made representations. They would all be considered by the Government when the time came for final decisions in those matters.

6. The Indian representative had stated that the South African Government had violated "solemn" agreements between the two countries by allegedly placing a ban on the entry of wives and children of Indians domiciled in South Africa. In that connexion, he recalled that in 1913 and 1914, the South African Parliament had passed two acts authorizing the families of Indians domiciled in the Union to enter South Africa under a special concession. That was a privilege conferred upon the Indians not shared by nationals of any other nation and was due to the fact that at that time the proportion of men to women among the Indians domiciled in the Union had been 63 to 37 per cent. Now that the number of Indians of either sex was approximately equal, the Government considered itself fully justified in withdrawing that concession and so placing the Indians on the same footing as other groups of immigrants. There could therefore be no question of injustice, particularly if it were remembered that on 10 February 1953 the Government had made a statement to the effect that any child born outside South Africa before 10 February 1954 would be subject to the previous provisions of the law until 9 February 1956.

7. The Indian Government claimed that the concession formerly granted to the families of Indians domiciled in South Africa had been perpetuated in subsequent "solemn" agreements. That was a novel argument, since during the entire existence of the League of Nations the Indian Government had never sought to register any so-called agreement. At that time, both India and South Africa had consistently regarded the agreements merely as declarations of policy. There was no reason now to consider that interpretation as obsolete. It was interesting to note that the Government of Pakistan, with which the Union Government had had correspondence on the matter, had refrained from submitting the problem to the Good Offices Commission.

8. On the question of the families of Indians domiciled in the Union, the Indian representative had stated that his Government had made representations to the South African Government and that no reply had been received. That was not so, for the Union Government had returned a reply to the Indian High Commission at Cape Town on 18 September 1953. If the Indian High Commission had failed to transmit the reply, that was not the fault of the Union Government.

9. Turning to the question of negotiations between the Governments concerned, he pointed out that his Government had on several occasions declared its readiness to take part in a round-table conference with the Governments of India and Pakistan. In 1950,

representatives of the three countries had agreed on a formula which would permit of such a discussion. His Government was still prepared to accept such a solution, on the understanding that the matter would be settled outside the United Nations. India, on the contrary, was not prepared to participate in a round-table conference, unless the South African Government would agree to waive its legal position and hold a conference under the aegis of the United Nations.

10. India was trying to justify its attitude by accusing his Government of refusing to agree not to proceed with the application of certain strictly domestic legislation. Why, it might be asked, was India refusing to participate in the proposed conference and why was it insisting that the conference should be held under United Nations auspices? The Indian Government knew full well that the plight of the Indians in South Africa was not as harsh as it tried to make out, for, if it were, they would take advantage of the proffered chance of repatriation. Although no one was keeping them in South Africa, they preferred to stay there. If India was really anxious to improve the lot of Indians in South Africa, it would presumably have intervened on their behalf in the manner most consistent with the two countries' mutual relations, namely by agreeing to participate in a round-table conference.

11. India, however, had taken a different stand, and the reason was simple enough: it knew perfectly well that South Africa could not sacrifice the principle on which it based its attitude. By pressing for a conference under the aegis of the United Nations, India was representing itself as the reasonable party seeking a settlement, whereas the Union was being placed in the light of the intransigent party "flouting" United Nations resolutions. By rejecting the solution proposed by South Africa and bringing the problem before the United Nations, India was trying to persuade the whole world that it was championing the oppressed. That was its aim. Little did it reckon that it was playing into the hands of destructive forces by appealing to blind passion and by committing an injustice towards South Africa. Representatives of South Africa had said in the past that without that campaign of vilification there would have been no such rift between the two countries as now divided them, and that the Union would be finding it less hard to ensure the orderly development of the country. The South African Prime Minister had recently stated that his country wished to live in peace with India and that great patience was needed until the day when India itself showed a friendlier attitude and made it possible to seek a solution.

12. There was yet another explanation of India's refusal to seek a reasonable solution, namely Indian penetration in Africa, which was a matter of concern to other African countries also.

13. Should the South African Government's conclusions about the motives of Indian policy be wrong, should India not be pursuing the ends he had described, should it be sincerely desirous of reaching an agreement, let it prove it by dropping its campaign of vilification and so help to relax the tension between the two countries.

14. The Committee, too, could contribute to such a relaxation of tension by due deliberation before adopting the draft resolution (A/AC.72/L.10) submitted by the Indian and other delegations. That document required the United Nations to intervene once more

in the domestic affairs of South Africa and to condemn the South African Government. It also tried to justify such intervention and condemnation by a number of unfounded allegations. The Committee would doubtless understand why the adoption of such a draft resolution could not fail still further to poison relations between the two countries.

15. Mr. NISOT (Belgium) stated that his delegation would abide by its traditional position which was directed towards safeguarding the integrity of the Charter.

16. Article 2, paragraph 7, of the Charter prohibited intervention in matters which were essentially within the domestic jurisdiction of a State; that was a general restriction affecting all organs of the United Nations and extending to all provisions of the Charter, the sole exception being the application of enforcement measures under Chapter VII. The decisions of the Union of South Africa, which was being criticized on their account, concerned the personal status of individuals who were, taken in the mass, South African nationals, settled in the country. It was therefore beyond doubt that they came essentially within its domestic jurisdiction.

17. It was, however, asserted that the Union was under certain international obligations in the matter and that that fact permitted the General Assembly to intervene. The Belgian delegation could not endorse that thesis, the gist of which was that a matter essentially within domestic jurisdiction changed its character and ceased to fit that description as soon as there was an international obligation. That contention conflicted with Article 2, paragraph 7, which specified that nothing contained in the Charter authorized the United Nations to intervene in matters essentially within domestic jurisdiction. Inasmuch as most of the provisions of the Charter created international obligations, it would not have been stipulated that nothing contained in the Charter permitted intervention in the domestic field if the intention had been to permit such intervention where there was an international obligation. That reasoning, which applied to the obligations arising from the Charter, applied *a fortiori* to obligations entered into under special treaties, that was to say, under provisions outside the Charter system.

18. The Belgian delegation had always entertained the gravest doubts of the General Assembly's competence to deal with the issue. It had supported moves to refer it to the International Court of Justice and regretted that they had failed. Belgium was firmly opposed to any policy of racial discrimination. Nevertheless, its delegation felt it had no right to express its views on the merits of questions raised in an organ whose competence had not been proved. As the joint draft resolution presupposed the Assembly's right to intervene, it could not vote in favour of it.

19. Mr. BENITES VINUEZA (Ecuador), quoting extracts from a statement made five years previously by the Prime Minister of the Union of South Africa on the racial policy which had led to the creation of nations of half-castes in South America, observed that Spain, which had colonized South America, had been the melting pot in which several ethnic strains had been fused and in which European and African cultures had mingled. That Spain had created nations of mestizos on the American continent and had never dreamed of applying a policy of racial segregation there should thus occasion no surprise. The mestizo peoples

of Latin America were proud of their origins and of the splendid history of their civilization.

20. Explaining his Government's position on the subject under discussion he observed that the issue had arisen in 1946, when the South African Government had begun its policy of racial discrimination. The conflict had been brought before the United Nations. The General Assembly had considered the matter at each of its sessions and had expressed in the resolutions it had adopted on the subject several principles worth recalling.

21. First, the treatment of people of Indian origin in the Union of South Africa might endanger international peace and security. Secondly, the policy of *apartheid* was necessarily based on doctrines of racial discrimination. Lastly, the Government of South Africa should respect the principles of the United Nations Charter and of the Universal Declaration of Human Rights and put an end to racial discrimination which violated fundamental human rights in the Union and thereby threatened the peace of nations. The maintenance of international peace was the purpose of the United Nations and therefore justified its action. Recommendations to both parties had been made by the General Assembly, so far without effect. It was therefore very gratifying to hear from the South African representative that his Government was prepared to come to a direct understanding with the Governments of India and Pakistan on the basis proposed at Cape Town in 1950 and to settle the differences separating them.

22. At its seventh session, the General Assembly had established by its resolution 615 (VII) a Good Offices Commission to assist in negotiations between the Government of South Africa and the Governments of India and Pakistan in order that a satisfactory solution might be achieved. Owing to the South African Government's refusal to recognize its competence, the Commission had unfortunately accomplished nothing. Although everything seemed to have been said on the question of competence, the matter apparently had not yet been exhausted. It was undeniable that under Article 2, paragraph 3, of the Charter all Members of the United Nations must settle their international disputes by peaceful means in such a manner that international peace and security and justice were not endangered. The action taken by the Assembly in the form of resolutions was undoubtedly a peaceful means of settling disputes, and it followed that South Africa could not object to the Assembly's action.

23. In addition, Article 14 of the Charter stated that the General Assembly could recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deemed likely to impair the general welfare or friendly relations among nations.

24. The competence of the Assembly was also affirmed in Article 10 of the Charter. The Charter did not, of course, authorize the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any State, and South Africa maintained that the matter under discussion fell within that category. Nevertheless, the concept of national sovereignty was not absolute. The purposes underlying any action by a State must not be at variance with the basic principles of international law or with the principles governing the conduct of all civilized nations.

25. Moreover, the sovereignty of the State was in itself the basis of the State's power to assume international obligations, which in turn necessarily limited

its sovereignty. The United Nations Charter was an international legal instrument resulting from an agreement freely entered into, and it imposed upon the Member States legal obligations which under Article 2, paragraph 2, of the Charter they were obliged to fulfil in good faith. The South African Government had, of course, the absolute right to draft and pass its own laws, but to the extent that certain provisions of its legislation conflicted with the principles of the Charter they constituted a threat to international peace and by that fact came within the competence of the United Nations.

26. The delegation of Ecuador would accordingly vote in favour of the joint draft resolution, but made certain reservations concerning those paragraphs of the operative part which concerned the passing and enforcement of national legislation that lay entirely within the jurisdiction of the South African Government. If the Committee voted on the proposal in parts, the delegation of Ecuador would abstain from voting on the paragraphs in question.

27. He appealed to the South African Government in the name of the principles of human dignity and of the equality of mankind without distinction of religion, sex or language, to renounce its policy of racial segregation, which was breeding hatred.

28. Mr. LUCET (France) recalled that his delegation had always stressed its deep human interest in the topic under discussion, because human rights and human values without distinction as to race or religion were at issue. France, in other words, earnestly hoped that a just and humane solution to that distressing problem could be reached on friendly terms.

29. On the other hand, his delegation had always had very serious doubts concerning the legality and propriety of intervention by the United Nations. As the Belgian representative had just pointed out, there was no clear evidence of the General Assembly's competence in a matter which in the light of Article 2, paragraph 7, of the Charter South Africa regarded as being within its domestic jurisdiction.

30. The experience of preceding sessions seemed to prove that little was to be gained by imposing upon States formulae and conditions with which they must comply before entering into direct conversations. An effort had been made to set up good offices commissions which, despite the best intentions of their members, were apt to give one of the parties the impression that an attempt was being made not so much to help as to impose certain conditions and points of view.

31. The French delegation believed that the method best suited to achieving a speedy and effective solution was that of direct negotiations between the parties, which would be entirely free to proceed and act as they wished. It continued to believe that the General Assembly, so far as it was authorized to act, should do nothing more than adopt a very simple resolution inviting the Governments of India and South Africa to seek an amicable solution.

32. Instead of a proposal of that kind, India and sixteen other States had submitted a draft resolution which was a veritable patchwork of considerations, judgments, invitations and even demands. The entire first part, instead of seeking a fresh approach for the future, merely bogged the question down more deeply in the old morass. The draft resolution also passed censure on the reasons underlying the South African

Government's domestic legislation and on the enforcement of that legislation. It complained that Government had not resorted to the Good Offices Commission even though the Commission was necessarily only an advisory body and to have recourse to it was optional. Those demands and censures constituted blatant interference in South Africa's domestic affairs and his delegation, as in the previous year, could not support them.

33. The French delegation feared that the time was still far distant when direct and unfettered conversations could be opened between the parties, such as would alone allow the question to be settled permanently and without bitterness. There was consequently every reason to fear that the subject would remain indefinitely on the Assembly's agenda.

34. His delegation would at the proper time request a separate vote on the various parts of the proposal; for it had no objection to certain clauses that resulted from a praiseworthy desire for conciliation and moderation. It could not, however, vote for the draft resolution as a whole.

35. Mr. TZYRAS (Greece) said that his delegation was very anxious for a peaceful solution to a delicate problem affecting friendly relations between Members of the United Nations.

36. The South African delegation had never abandoned the legal position adopted by it in 1946, that the General Assembly was not competent to consider the matter. That delegation had, on the other hand, always stated that it was prepared to discuss the problem with the Governments of India and Pakistan through direct negotiation. Such negotiations had, in fact, been started, but had been unsuccessful, and the quarrel had become embittered. The parties had all disclaimed responsibility for the setback, and the discussions in the General Assembly had merely helped to stiffen their attitude.

37. By adopting resolution 615 (VII), the General Assembly had thought to facilitate negotiations through the medium of a Good Offices Commission. That Commission's report (A/2473), which was at present under consideration, was a record of failure. It would be wrong to censure the Good Offices Commission or criticize the parties. The point to be borne in mind was that there was general agreement concerning the purpose to be achieved, but that opinions differed on the means to be used. The negative results of past efforts were ample proof that the Assembly was pursuing the wrong course. If it persisted therein, the result would be further failure, which would serve neither the interests of the parties nor the interests of peace nor the prestige of the United Nations.

38. The South African Government had alleged that the United Nations was not competent. That attitude had been vigorously criticized, but each party adhered to its original position, firmly convinced that it was right. Apart from the matter of competence, there was the important question whether the General Assembly might not have acted unwisely in setting itself up as a judge rather than confining itself to the more modest but more effective function of mediator. There was no hope of achieving the slightest result unless there was some advance assurance of the goodwill of the three Governments concerned and their desire to co-operate.

39. The Greek delegation was of the opinion, already expressed at the seventh session, that instead of calling upon the Government of South Africa to refrain from implementing the provisions of the Group Areas Act, a simple recommendation should be addressed to that Government requesting it to avoid any steps which might prejudice the success of the negotiations contemplated.

40. The Greek delegation would vote against the joint draft resolution precisely because it desired a peaceful settlement of the question.

The meeting rose at 5.10 p.m.