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Chairman: Mr. Thor THORS (Iceland).

AGENDA ITEM 22

Treatment of people of Indian origin in the Union of South Africa: report of the United Nations Good Offices Commission (A/2723, A/AC.76/L.3/Rev.1) (*continued*)

1. Mr. RIBAS (Cuba) said that the co-sponsors of the draft resolution A/AC.76/L.3 had held discussions with the parties concerned and had explored all points of view. They had been encouraged by the understanding shown on both sides, and, joined by Costa Rica, had submitted a revised draft (A/AC.76/L.3/Rev.1) incorporating changes which were intended to clarify the text and dispel any misgivings concerning the methods suggested.

2. He hoped that the revised draft would be given sympathetic consideration by all concerned.

3. Mr. SMITH (United States of America) said that the question of the treatment of people of Indian origin in the Union of South Africa was one of the most difficult with which the United Nations had been called upon to deal. All previous attempts at settlement had been unsuccessful, and the Good Offices Commission had reported (A/2723) that it too had been unable to make any progress towards a solution. However, complicated problems did not admit of easy and rapid solutions, and hope had not been abandoned.

4. He referred to the experience of his own country, which was a melting pot of many groups, and which had been founded upon the concept of equality. Its constitution and the statements of its leading citizens left no doubt as to its position on the basic problem involved in the item under discussion. That position had been emphasized recently when the Supreme Court had ruled that segregation in the public schools on the basis of race, creed or colour was unconstitutional. Yet that decision was separated from the Emancipation Proclamation by a space of ninety-one years; a fact which went to show that problems of human relationships were not solved overnight. He was not suggesting, however, that a similar length of time would or should elapse before the Union of South Africa resolved its own problem in the spirit of the previous resolutions of the United Nations and of the Charter itself. Moreover, a particularly disturbing element in the problem before the Committee was what appeared to be the direction of the Government's policy in the Union of South Africa. The Charter proclaimed the

fundamental equality of man, and the recognition of the dignity of each individual human being. The Charter placed on Member States the obligation to promote respect for and observance of fundamental human rights.

5. Turning to the revised draft resolution, he expressed his Government's appreciation of the efforts of its co-sponsors. Paragraphs 1 and 2 of the operative part, which stressed direct negotiations, were constructive, since progress could only be made if the parties were willing to confer and negotiate. However, he expressed doubts whether the purpose of those paragraphs could be advanced by paragraphs 3 and 4. Paragraph 3 paralleled General Assembly resolution 511 (VI). When the Secretary-General explored the possibilities of this course of action with the parties, South Africa replied that since it did not recognize the General Assembly's jurisdiction it could not recognize the Secretary-General's competence to take this action. The South African Government's position had been that it was willing to negotiate, but only outside the United Nations. The time had come to test that avowal. But the time-limit provisions included in paragraphs 3 and 4 would be a practical and psychological obstacle to mediatory efforts; in particular, such efforts should not be hampered by any obligation to report to the General Assembly within a specified period. Paragraph 4, accordingly, was undesirable and unnecessary; in any event, there would be nothing to prevent the parties from placing the item on the agenda again if they felt that necessary.

6. He suggested that paragraphs 2, 3 and 4 should be replaced by a single operative paragraph, as follows:

"Suggests moreover, pending further consideration by the General Assembly, that the parties concerned should consider the selection of a Government, agency or person to facilitate contacts between them and assist them in settling the dispute."

7. Such a text would give maximum encouragement to the parties to undertake negotiations with the assistance of a third party mediator or good officer if the parties, in their discretion, believed that such assistance would be helpful. At the same time it would indicate that the General Assembly would review the whole matter if no progress was made by the parties through direct negotiations.

8. Mr. PALAMAS (Greece) said that his delegation would support any measures likely to bring about an equitable solution of the problem.

9. Referring to the Indian representative's statement, he recalled that the question of the General Assembly's competence in the matter had given rise to acrimonious debate, revolving around Article 2, paragraph 7 and Article 10 of the Charter. However, the General Assembly had adopted six resolutions on the question of the treatment of people of Indian origin in the Union of South Africa, and if the legality of those resolutions

were questioned at the present stage, confidence in the United Nations would be shaken. Moreover, eminent jurists such as Lauterpacht and Kelsen had recognized the right of the General Assembly to rule on its own competence.

10. His delegation had originally shared the South African Government's view that the item under discussion related to a matter within the domestic jurisdiction of South Africa; but it had revised its position when the General Assembly had decided otherwise. Despite the eminently political character of the General Assembly, a point which had been stressed (10th meeting) by the Brazilian representative, principles had to be observed and Member States could not refuse to recognize General Assembly resolutions.

11. Accordingly, the position with regard to competence was quite clear, and the question should be discussed from the angle of substance alone.

12. He paid tribute to the efforts of the Good Offices Commission, and expressed appreciation of the Cuban representative's suggestion, on which the joint draft resolution had been based. The co-sponsors of the draft resolution had shown moderation, initiative and goodwill, and he hoped that their constructive contribution would lead to a settlement.

13. Mr. VILOVIC (Yugoslavia) said that his country, as a member of the Good Offices Commission, had tried to contribute to a solution of the question under discussion, which had become a "hardy perennial". It was with regret that his delegation was obliged to agree with the conclusion set forth in paragraph 4 of the Commission's report: that no proposal likely to lead to a peaceful settlement could be made owing to the unco-operative attitude of the South African Government.

14. The conditions under which almost 400,000 people of Indian origin lived in the Union of South Africa had not changed, and relations between the countries concerned were deteriorating.

15. He reaffirmed his delegation's position on the General Assembly's competence in the matter, and pointed out that discrimination of any kind was harmful to good relations between States and violated the principles of the Charter.

16. The recurrence of the question on the General Assembly's agenda was being used as an argument to prove that further discussion was useless. But the United Nations should not give up in the face of unilateral opposition, particularly in the present international situation, when there were possibilities of solving problems of much greater difficulty.

17. His delegation did not object to direct negotiations, and would support any constructive measures, provided that they were in keeping with previous resolutions and with the principles of the Charter.

18. Mr. LIU Chieh (China) said that the item under discussion had originally been submitted to the United Nations in the hope that the Organization would be able to use its moral influence to bring about a settlement. That hope had not been fulfilled, but the Chinese delegation still maintained that the promotion of human rights was just as important as the maintenance of peace and security.

19. The South African representative had recently stated (10th meeting) that his Government had not closed the door to round table negotiations. It appeared, therefore, that the idea of establishing mediation

machinery had not been fully explored when it had been suggested at the fifth session in 1950. Accordingly, his delegation welcomed the joint draft resolution, which, while emphasizing the desirability of direct negotiations, put forward alternative suggestions. If the parties accepted the proposed procedure, positive results might well be achieved.

20. Some representatives had contended that direct negotiations would have the effect of removing the problem from the jurisdiction of the United Nations, and would thus damage the Organization's prestige. But the draft resolution, while giving every encouragement to direct negotiations, did not call in question the competence of the United Nations.

21. With reference to the Indian representative's recent statement regarding Chinese nationals overseas, Mr. Liu pointed out that until quite recently the thirteen million persons concerned had not been eligible for citizenship in many of the countries of residence. Those who had renounced Chinese nationality and acquired new citizenship were no longer considered under Chinese law as Chinese nationals; and in view of their peaceful way of life they had never been a cause of anxiety to the Governments concerned. The significant fact was that the great majority had repudiated the Peiping régime and continued to support the cause of Free China. That was the case even in countries which had recognized the Peiping régime.

22. Mr. HAMDANI (Pakistan) said that the calm and hopeful atmosphere created by the Good Offices Commission's report, the Cuban representative's suggestion and the efforts made by various countries to prepare an acceptable draft resolution had been destroyed by the South African representative's statement, which showed that the South African Government had once again taken refuge in Article 2, paragraph 7 of the Charter. He expressed the hope that that paragraph would be given due attention when the revision of the Charter was discussed, at the tenth session.

23. He reviewed briefly the resolutions which the General Assembly had adopted on the item under discussion, and pointed out that the Cuban representative's suggestion had been made on the basis of paragraph 8 of General Assembly resolution 719 (VIII). Unfortunately, all attempts to achieve a solution of the question had failed owing to the position taken by the South African Government.

24. His delegation would support any action taken within the framework of the United Nations, and welcomed the joint draft resolution, which offered the possibility of a compromise solution.

25. Mr. ARDALAN (Iran) reviewed the resolutions successively adopted by the General Assembly in its attempts to settle the dispute by peaceful means. The most recent attempt had been that made by the Good Offices Commission, which deserved commendation for its efforts although, like all the previous ones, they had ended in failure. The South African Government refused to budge from the position that the problem by virtue of Article 2, paragraph 7 of the Charter was outside the competence of the United Nations, and rejected all General Assembly resolutions on the matter as unconstitutional. But the inclusion of the item in the Assembly's agenda at session after session and the adoption of resolutions on the subject was sufficient proof of the Organization's competence. By dealing

with the problem, the United Nations was not intervening in South Africa's domestic affairs.

26. The Union of South Africa had expressed readiness to enter into negotiations with India and Pakistan in accordance with an agreement reached at Cape Town in 1950, provided they were held outside the United Nations. Unfortunately, the South African Government had not submitted any concrete proposals. Nevertheless, there was still some hope that the three parties might initiate the direct negotiations suggested in the revised joint draft resolution. The Iranian delegation was prepared to vote for that resolution and any constructive suggestions facilitating a solution. It hoped that the Assembly would be able when it returned to the item to congratulate the parties on having settled their differences and to commend South Africa on its co-operation.

27. Mr. NIETO (Mexico) emphasized the universal desire for a settlement of the dispute, which was a deeply-rooted problem affecting all nations and involving the validity of principles proclaimed in the Charter. His Government had participated in the debate because of its dedication to the principle of equal rights and its conviction that racial discrimination was contrary to the purposes and principles of the United Nations.

28. South Africa's claim that Article 2, paragraph 7 of the Charter barred Assembly debate or decision on the item was untenable in the light of Article 1, paragraph 3 of the same instrument: the international character of human rights and fundamental freedoms could not be repudiated by appeal to the domestic jurisdiction clause. Moreover, the Assembly itself had settled the question of its competence; it had sought not to impose a solution on the parties, but to secure the South African Government's co-operation with a view to a peaceful settlement in conformity with international law. Mexico, together with the other Latin-American States, strongly supported the typically inter-American principle of non-intervention; it was significant, therefore, that the sponsors of the joint draft resolution did not share South Africa's interpretation of the principle of non-intervention as applied to the dispute, and believed, with Mexico, that the Assembly's competence was based on the Charter and could not be construed as intervention in domestic affairs.

29. In keeping with its tradition of supporting all measures designed to end racial discrimination, the Mexican delegation gave general support to the joint draft resolution as a commendable effort to reach a satisfactory solution of the dispute. It was to be hoped that South Africa would interpret the efforts of the sponsors of the joint proposal as a sincere and friendly effort to assist in the solution of a difficult problem.

30. Mr. SUDJARWO (Indonesia) commended the Good Offices Commission on its unremitting efforts to foster a settlement between the parties, but shared the general disappointment at the failure of those efforts because of the unco-operative attitude of the South African Government.

31. Indonesia rejected the contention that Article 2, paragraph 7, was applicable. South Africa interpreted that Article as if it could be abstracted from the other principles, provisions and ideals set forth in the Charter. Not only was South Africa's obligation in the matter clear under the Charter; it was also based on agreements with the other two parties which the Assembly had urged it to implement. Indonesia's conviction that

the Assembly was fully competent to deal with the problem had been strengthened by the appearance of the item on the agendas of successive sessions.

32. While the Assembly continued to debate the item, however, the situation of people of Indian origin within the Union remained unchanged, and was likely, judging from the reports made to the recent South African Indian Congress at Durban, to deteriorate further if a peaceful solution was not achieved. It was difficult to understand South Africa's vehement objection to a settlement under United Nations auspices, in view of the fact that the United Nations had been created for the specific purpose of providing machinery for the peaceful settlement of disputes between States, and that the Assembly had been empowered to recommend measures for the adjustment of situations likely to impair friendly relations. Moreover, as the United Nations, at the request of one of the parties and in exercise of its clear duty, had repeatedly acted on the matter, there could be no question of putting it aside; negotiations should be held under United Nations auspices to prepare for an ultimate solution compatible with the Purposes and Principles of the Charter. That was undoubtedly the intention of the sponsors of the joint draft resolution. The continued responsibility of the United Nations must be emphasized lest its authority should be undermined. In that context, the Cuban suggestion (8th meeting) for a mediator had considerable merit.

33. Mr. ZARUBIN (Union of Soviet Socialist Republics) said the USSR had consistently maintained the view that the South African Government's discriminatory measures against people of Indian origin constituted a violation of the principles of the Charter and had created a situation detrimental to friendly relations between the States concerned. South Africa's argument that Article 2, paragraph 7 barred Assembly debate on the problem was wholly unfounded. Not only had the Assembly itself repeatedly confirmed its competence, but Articles 1, 10 and 13 of the Charter incontestably empowered it to intervene in order to ensure respect for human rights, without any distinction. In view of the South African Government's defiance of its clear obligations under the Charter and under its agreements with India and Pakistan regarding the treatment of people of Indian origin, the Assembly was compelled to continue its efforts to achieve a solution. The USSR would vote for any resolution having that purpose.

34. U TUN SHEIN (Burma) expressed appreciation of the Good Offices Commission's efforts and regretted that they had been frustrated by South Africa's failure to co-operate. That Government's contention that the question was one of domestic jurisdiction had been demolished by past Assembly action and by many statements that had been made in the course of the debate. For its part, Burma considered any question of racial discrimination and denial of human rights to be within the competence of the United Nations. While it recognized that a sovereign State was entitled to enact legislation necessary to safeguard the interests of its own nationals as against foreigners, it found no justification for discrimination between two groups of South African nationals on grounds of race.

35. Burma reserved its position on the joint draft resolution for the time being, but generally speaking

would support any suggestion likely to bring about a satisfactory settlement under United Nations auspices.

36. Mr. BENITES VINUEZA (Ecuador) said that on objective analysis of the positions taken on the question it would be found that South Africa and a few colonial Powers denied the Assembly's competence on the basis of Article 2, paragraph 7; that several other Members upheld the Assembly's competence on the ground that it was empowered under the Charter to provide machinery for the settlement of disputes between States; that still others claimed the Assembly had competence in that a violation of human rights was involved; and that another group, including Ecuador, upheld the Assembly's competence both to settle a dispute between States and to act in any violation of human rights. The South African Government rejected all solutions within the framework of the United Nations. Its thesis was that the issue could be disposed of only by an understanding between the parties outside the United Nations, and it held the General Assembly responsible for the fact that the problem had not yet been solved. Consequently, the sponsors of the joint draft resolution had suggested two alternative procedures for settlement: direct negotiations and mediation by a third party.

37. The General Assembly's competence had been affirmed by eight years of debate and decision. The suggested direct negotiations would not take the matter out of the Assembly's hands. On the other hand, they would offer the opportunity for the parties to reach agreement by themselves. It was immaterial whether the issue was characterized as a question of human rights, or as simply a dispute between two sovereign Member States. If one party maintained the second view, the Assembly should not prevent it from proving the efficacy of direct negotiations. Inflexibility would inevitably lead to failure. If direct negotiations resulted in a satisfactory settlement, it was of no consequence that they had been held outside the United Nations; there were many precedents for the settlement of important international problems outside the Organization. That did not reflect adversely on the authority of the Organization; on the contrary, it was precisely in virtue of the Assembly's established competence that the method of direct negotiations had been suggested by the sponsors of the joint proposal. If direct negotiations proved fruitless, the Assembly could not be blamed: it had provided an opportunity to apply the methods; and by asking the Secretary-General to appoint a third party to assist in a settlement and report the results it retained its competence.

38. Ecuador did not agree with the United States that mediation by a third party should be abandoned because it had failed to succeed in the past. As the United States representative himself had pointed out, in referring to the long interval which separated the Supreme Court's anti-segregation decision from the Emancipation Proclamation, patience was needed; and insistence on a procedure might in the long run yield results. However, Ecuador appreciated the United States' suggestion and would give it careful study.

39. Ecuador firmly upheld the principle of non-intervention in matters essentially within the domestic jurisdiction of States. In view of the clear provisions of Articles 1, 10 and 13, however, the problem in dispute did not come under Article 2, paragraph 7. Viewed as a dispute between States, it came under the Charter provision empowering the Assembly to recom-

mend measures for peaceful settlement; and viewed as a violation of human rights, it also came under the Charter. Moreover, Article 2, paragraph 7, contained a qualification; it excepted from domestic jurisdiction enforcement measures under Chapter VII. Such measures could be moral as well as physical. Matters "essentially" within the domestic jurisdiction of States could be defined as matters which, by their nature, could not be made subject to international standards; they were a direct outgrowth of the exercise of sovereignty, such as the power to legislate. However, if a State agreed by international convention to take action on a matter affecting its sovereignty, it took the matter out of its domestic jurisdiction. The Charter was both a multilateral treaty and a statute of the organized international community; it laid down mandatory rules having the force of international law, including sanctions, which all signatories were bound to observe. Consequently, as a Member State, South Africa was bound by those rules in the question under discussion. It was to be hoped that its position of principle would not prevent the South African Government from agreeing to direct negotiations in a spirit of conciliation.

40. Mr. Mahmoud RIAD (Egypt) pointed out that none of the many General Assembly resolutions concerning the treatment of people of Indian origin in the Union of South Africa had been implemented; there was thus some danger that the question might eventually do harm to international understanding.

41. His delegation had consistently defended human rights, and had therefore supported the resolutions which had been proposed, during the long history of the dispute, in an attempt to find a solution. He emphasized that the General Assembly had never wished to arraign the South African Government; it had wanted only to solve the problem brought before it, but its efforts had been frustrated by the South African Government's refusal to co-operate and its plea of domestic jurisdiction.

42. The latter argument had been repeatedly refuted; moreover, since the treatment of people of Indian origin was the subject of international agreements between the Indian and South African Governments it was clearly not within the domestic field but a matter for United Nations action.

43. The Chairman of the Good Offices Commission had suggested other measures to find a solution within the framework of the Charter. The Egyptian delegation welcomed any constructive measures, but reserved its right to comment later on the revised draft resolution.

44. Mr. DERINSU (Turkey) said that two important principles were involved in the question: the sovereignty of Member States in matters of domestic jurisdiction and the maintenance of human rights and freedoms.

45. His delegation approved the efforts of the Good Offices Commission and regretted its failure; but it had great faith in the healing effects of calm, quiet evolution, and believed that the method of direct negotiation indicated by the draft resolution might bear fruit.

46. Mr. CANAL RIVAS (Colombia) emphasized that his delegation had not often taken part in a question which might be construed as involving the domestic jurisdiction of a Member State and on that ground had always abstained. He felt, however, that the dispute had taken a fresh turn, thanks to the spirit of the joint draft resolution, which appealed to the parties to reach

a peaceful solution by direct negotiations and reminded them of their duty to find a solution which, without invading their sovereignty, would respect the rights of others.

47. His delegation therefore agreed in principle with the purpose of the draft resolution, and would support operative paragraphs 1 and 2. It would support paragraph 3, which might involve the question of domestic jurisdiction, only if all parties concerned in the dispute agreed to its inclusion because there would then be no question of violating domestic jurisdiction. Otherwise it would abstain.

48. He welcomed the initiative of the Latin-American delegations in presenting the resolution, a token of their firm belief that most disputes could be solved by direct negotiations, including methods of peaceful settlement, on the grounds that such means led to fairer and more lasting solutions than those born of armed strength or imposed.

49. Mr. HEYWOT (Ethiopia) regretted that the efforts of the Good Offices Commission had been frustrated by the South African Government's attitude.

50. His delegation had always insisted that the human rights provisions of the Charter must be fully maintained. Accordingly, it felt that the treatment of people of Indian origin in the Union of South Africa, which reports showed to be most unsatisfactory, was a proper matter for the Organization to discuss. Throughout the dispute his delegation had welcomed all efforts to reach a solution in a spirit of understanding and co-operation; it therefore supported the joint draft resolution.

51. Mr. RODRIGUEZ FABREGAT (Uruguay) said that the General Assembly's competence in the dispute was beyond question. The defence of human rights was undoubtedly an international obligation, and the provisions of Article 2, paragraph 7, of the Charter could never be invoked to cover violations of those rights. His Government had always advocated non-intervention in matters genuinely within domestic jurisdiction; but the operative word in Article 2, paragraph 7 was "essentially"; and that restricted the application of the paragraph to matters which were subject only to internal legislation. It was clearly preposterous to invoke the paragraph in order to deny the General Assembly's right to act in matters involving violations of human rights. In any case, the treatment of people of Indian origin formed the subject of treaties between the Indian, Pakistan and South African Governments.

52. He drew attention to the diversity of races living in harmony on the American continent. He failed to understand why the protection of the laws and institutions of the Union of South Africa should be forever denied to people of Indian origin who had been established in South Africa for so many years.

53. He agreed to the addition of the phrase "and has adopted resolutions on that subject" to the preamble of the draft resolution, since it served as a reminder that the matter had always been regarded as within the province of the United Nations.

54. His delegation favoured any proposal likely to lead to a solution of the problem; he reserved his right to comment later on the details of the draft resolution.

The meeting rose at 6 p.m.