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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. VILOVIC (Yugoslavia) promised his delegation's support for any proposal that might solve the difficult and dangerous problem caused by racial discrimination in South Africa. It was to be regretted that the Good Offices Commission, of which Yugoslavia was a member, had not been able to do its work owing to the South African Government's obstruction. The situation was still deteriorating, and there was a danger of new conflicts. The United Nations must continue its attempts to find a settlement.

2. The Yugoslav delegation was convinced that a solution could best be reached through the United Nations, but would not oppose direct negotiations if agreement could be achieved in that way. In opposing racial discrimination, it was sure it was defending a just cause. It would vote for the joint draft resolution (A/AC.72/L.10).

3. Mr. PEON DEL VALLE (Mexico) said that the Mexican delegation's position was unequivocal; Mexico, however, would be voting not against a particular country, but for a principle.

4. The Ecuadorian and Uruguayan delegations had rendered the Committee good service in stressing the aspects of law and principle in the attitude of the Latin-American republics. That was particularly important because of the argument put forward by the South African delegation that Article 2, paragraph 7, of the Charter precluded the United Nations from discussing the question.

5. That paragraph enunciated the principle of non-intervention in matters within the domestic jurisdiction of States, a characteristic principle of inter-American international law such as had been proclaimed at the Seventh International Conference of American States, held at Montevideo in 1933. It was significant that the representatives of States which had contributed to the reinforcement of that principle should now disagree with the South African attitude.

6. The Mexican delegation was glad to note that the South African Government was disposed to enter into negotiations outside the United Nations, both because such negotiations might bring nearer a settlement and because they must be regarded as a recognition of the international implications of the matter. Several delegations had mentioned the Articles of the Charter concerning human rights and fundamental freedoms, particularly Article 1, paragraph 4, stating that the United Nations should be a centre for harmonizing the actions of nations in solving international problems. The Committee was trying to harmonize the efforts of three Member States to solve an international problem.

7. The South African representative had indicated at the 14th meeting that, consistent with its legal stand, his Government had not recognized the Good Offices Commission. The position of most delegations which did recognize the competence of the General Assembly was equally clear. It was to be hoped that the opinion of the majority would not be taken as showing a lack of respect for the South African Government and its delegation. That opinion was based upon what was felt to be an obligation to defend the equality of men and races. The General Assembly could not impose a solution on South Africa, but could invite it to co-operate in finding an amicable solution through the machinery provided by the Assembly. It was not a few individuals, not even a few thousands, but whole races which were at stake; contemporary positive law was giving rise to a new legal concept about their lot.

8. Mrs. BOLTON (United States of America) said that the fact that the Assembly was again discussing the question of Indians in South Africa was evidence of the intrinsic difficulty of the problem. Much time was required for a solution, yet the impatience of the people involved as years passed without improvement was understandable. Serious wrongs could be endured as long as some progress at least was visible, but not when official policy was exacerbating the situation. The Committee was not concerned with isolated instances of racial discrimination, but with the whole trend of governmental policy. That was why the general obligations undertaken by the signatories of the Charter were relevant to the present issue.

9. The United States was a nation of many races, and its own race relations were not perfect. Although the Declaration of Independence of 1776 had proclaimed the freedom and equality of all men, it was not until nearly ninety years later, after a civil war, that slavery had been abolished. The question of civil rights remained one of the most important problems in the United States at the present time. Generally speaking, United States policy had been directed towards equality, and progress was still being made.

10. The question before the Committee was essentially the outcome of local conditions, and an attempt made from the outside to modify the complex relationships involved might not only be ignored, but might cause

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

further intolerance. There were therefore practical limitations to the possibility of the United Nations being able to improve the situation. Under the Charter, the General Assembly could only make recommendations and they could be given effect only if accepted by the nations concerned.

11. Since 1946, the Assembly had appealed to the governments concerned to negotiate, it had offered its good offices both through a commission of Member States and through an individual appointed by the Secretary-General, and had asked that certain laws be suspended pending negotiations. All those efforts had been unsuccessful. The South African Government had told the Assembly and its Good Offices Commission that the United Nations was not competent to consider the question. Although South Africa had loyally supported the action taken by the United Nations in Korea, it had failed to respond to the General Assembly's resolutions on the question under discussion. It had, however, declared itself willing to negotiate outside the United Nations.

12. Apart from the attitude of South Africa, there had been other difficulties. India had declared itself unable to take part in the proposed conference in Cape Town in 1950, with an agenda agreed to by all parties, after the rejection by South Africa of the request by India and Pakistan that the enactment and implementation of the Group Areas Act be suspended during the negotiations.

13. The history of the question appeared to indicate that it would be useless to set up further mediating bodies. That did not, however, mean that the United Nations had no part to play. The Assembly's basic task was to bring about direct discussions between the parties and it should make no further recommendations until the governments concerned had made further efforts to resume direct discussions.

14. The United States delegation was not in favour of the matter being automatically placed on the agenda of the ninth session, since that might prejudice negotiations. Moreover it was quite simple for any Member to ask for the inclusion of the item if necessary. Nor was a recommendation addressed only to South Africa advisable. Her Government's view might be different if the General Assembly asked all parties to avoid taking action likely to prejudice negotiations. The United States considered it harmful and inappropriate to include in any draft resolution on that question, expressions of regret over past actions taken by one or other of the parties or references to any particular domestic legislation.

15. Ato Zaude Gabre HEYWOT (Ethiopia) found it distressing to note that policies of tyranny, segregation and hatred were still being enforced at the present stage of civilization. The Union of South Africa, the country of Field Marshall Smuts, one of the authors of the Charter, should realize how unfavourably the prevailing situation reflected upon it.

16. The report of the Good Offices Commission (A/2473) merely testified to the fact that the South African Government had not availed itself of the good offices. Since the Commission's task could not be fulfilled, the prospects of finding a solution were not encouraging. However, the Committee should continue its endeavours until appropriate steps were taken to end the policy of racial discrimination in South Africa. That policy was inflicting injustices in flagrant disregard of the Charter and the Universal Declaration of Human Rights, as

well as of bilateral agreements. The question was therefore undoubtedly an international one, and intervention by the United Nations was fully justified.

17. If peace were to be achieved, unselfish and wise efforts must be made to create conditions in which understanding, love and justice could prevail. Lasting peace must be built on a foundation of love and justice and not on the shifting sands of racial pride.

18. The Ethiopian delegation, which would vote for the joint draft resolution, appealed to the South African delegation to modify its attitude.

19. Mr. QUIROS (El Salvador) said that the question of the Organization's competence had already been decided by the *Ad Hoc* Political Committee in its resolution (A/AC.38/L.40) of 18 November 1950 and had been tacitly recognized by the General Assembly in a number of resolutions adopted with an overwhelming majority.

20. His country had always strenuously maintained the principle of non-intervention in the affairs of free and independent nations and would be the first to oppose consideration of the question by the Assembly if such consideration could be deemed interference in the internal affairs of a friendly nation. There was no disputing the right of any country to make its own laws and to perform those acts of government which it considered appropriate within its own territory. But it must be recognized that an international Charter existed, based on certain principles which States had agreed to respect. Some of the Union Government's laws were at variance with those principles, since they perpetuated racial segregation, which was contrary to the Charter and had been expressly condemned by the General Assembly in its resolution 103 (I). Moreover, the application of those laws had produced a situation which was adversely affecting relations with several Members of the Organization and might eventually constitute a threat to peace and security. The matter had therefore ceased to be one of purely internal jurisdiction and had become an international question in which the Organization not only could, but should, intervene.

21. When the Central American republics were achieving independence, José Simeón Cañas had made a moving plea for freedom for all slaves. That had been the origin of a provision, retained in all the constitutions of his country, that all men in El Salvador were free. He did not wish to draw a parallel between slavery and the present situation in the Union of South Africa, but merely to underline his delegation's view that all men were equal, whatever their nationality, race, sex or religion. Any kind of discrimination, especially if based on differences of religion or colour, was repugnant to it.

22. The fundamental principles of the Charter, particularly those stressing the dignity of the human person and the fact that nations should live together in peace, would remain juridical and political abstractions unless observance of them were required of all nations.

23. His delegation would vote for the joint draft resolution, but in doing so it had no wish to take any action prejudicial to the interests of the Union of South Africa, for which his country had a great admiration.

24. Mr. FERREIRA DE SOUZA (Brazil) observed that the treatment of people of Indian origin in the Union of South Africa continued to be a cause of great

concern throughout the world. It must therefore be re-examined; he wished to emphasize that his delegation was moved by no other consideration than the desire to find a just solution of the problem.

25. He would not refer to the solution other nations had found to the problem of the co-existence of different races, although he thought that the Brazilian one, founded on the theory that all men were equal, was excellent. He recognized that in the course of its history a country might be confronted with delicate problems and that when the issues at stake had international repercussions, a feeling of national pride might fetter the government. Consequently, those who intervened in the dispute must be careful not to aggravate matters.

26. The South African representative had said that the legal approach to the problem was the only practicable one. It was true that the legal implications of the problem were of such importance that they should take precedence over the political aspects. It was unfortunate, however, that the legal approach raised the question of whether or not the Organization was competent to make recommendations for a settlement. The General Assembly in its resolutions had maintained that it was competent but the representatives of the Union of South Africa denied it and claimed that the matter was one of domestic jurisdiction, and therefore came within Article 2, paragraph 7, of the Charter.

27. That objection must be given due consideration, although his delegation did not agree with it. Article 2, paragraph 7, did not create the sovereignty of States, but rather assumed its existence. In fact, that principle was inherent in the Organization itself. The purpose of Article 2, paragraph 7, was probably to limit the right of sovereignty in a manner recognized by many States and statesmen as being essential to the peace of the world. But an individual article could not be interpreted on its own. The Charter must be considered as a whole. Article 55 enumerated some cases within the competence of the United Nations which nevertheless fell outside the traditional limits of international law. The Organization had the duty of furthering the solution of social and economic problems and of fostering universal respect for and observance of human rights and fundamental freedom for all, without distinction as to race, sex, language or religion. There, the Charter had entered a field that had in the past been outside international law, but was now a part of it. It was true that the Charter did not confer on the United Nations the power to legislate on the subject or to impose rules on Member States; but the United Nations was entitled under Articles 10, 11 and 14 of the Charter to examine and discuss any questions without being unduly restricted by the principle of sovereignty.

28. Thus, the Assembly could consider the question of racial discrimination without infringing the principle of sovereignty as defined in the Charter. If it should be proved that a principle of the Charter had been violated, his delegation would be the first to recant, and he was sure that, if the contrary were proved to the satisfaction of the South African representative, he would review his own position.

29. In 1946, when the question had first been brought before the United Nations, the United States, the United Kingdom and Sweden had proposed that an advisory opinion should be obtained from the International Court of Justice on the question whether the

Indian complaint was within the Organization's jurisdiction. That proposal still had great merit. It might be objected that the time for such a course had passed, since the General Assembly had already adopted a resolution establishing its own competence. It was true that the Assembly's authority must be upheld, but that would be ensured if the Assembly's decision were further reinforced by the principal juridical organ of the United Nations.

30. The wisest course might be to refrain from putting the joint draft resolution to the vote and to request an advisory opinion of the International Court of Justice as to whether that proposal, as it stood, was consistent with the Charter. He was not putting forward a formal proposal, but was merely stating what in his opinion would be the most logical and effective course of action.

31. He was aware that India and Pakistan had consistently refused to submit the case to the International Court of Justice for an opinion and he doubted whether the South African representative would still favour that course. Nevertheless, if the legal approach were the only valid one, as the South African representative had maintained, such an opinion was clearly essential.

32. The General Assembly had repeatedly urged the interested parties to undertake formal or informal discussions. The South African representative had stated that his Government was willing to discuss the question at a round-table conference with India and Pakistan outside the United Nations. It was regrettable that the South African representative could not accept such a conference in compliance with the General Assembly's resolutions, but his delegation would welcome the holding of such discussions as a constructive step towards a solution of the problem. The Committee could best assist the negotiations by creating an atmosphere conducive to an understanding.

33. Mr. AZKOUL (Lebanon) stressed the importance of the question under discussion not only to the parties, but to the whole world, since it was likely to have considerable repercussions on international relations.

34. The basic problem was that of the Organization's competence in matters connected with human rights. At the birth of the United Nations, nations had been moved by a spirit of reaction against war and against racial persecution. Consequently, the Organization numbered among its basic principles the desire to save succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights. It might even be said, without departing from the spirit of the Charter, that those were the Organization's only aims. If it were accepted that the effort to prevent war was inseparable from the effort to consolidate peace and that the effort to encourage respect for human rights was inseparable from the effort to foster economic, social, cultural and humanitarian progress, there was nothing in the Charter which could not be directly related to one of those aims.

35. He would go even further and state that, if the United Nations were obliged to sacrifice one of those objectives, the spirit of the Charter would compel it to sacrifice the maintenance of peace and to retain respect for human rights. The Charter did not endeavour to establish peace at any price, but peace based on justice. For example, the United Nations had preferred to continue the war in Korea rather than

to accept the principle of forced repatriation, which was contrary to fundamental human rights. It was therefore illogical to maintain that under Article 2, paragraph 7, of the Charter the United Nations was not competent to intervene in the affairs of a State where human rights were concerned. In any case, Article 14 of the Charter stated that the General Assembly could "recommend measures for the peaceful adjustment of any situation . . . including situations resulting from a violation of the provisions of the Charter setting forth the Purposes and Principles of the United Nations".

36. It would nevertheless be wrong to assume that Article 2, paragraph 7, was not applicable to questions of human rights at all. There would certainly be cases which the Organization would not be competent to consider since they were essentially within the domestic jurisdiction of a State. But the Charter did not specify what matters, in the field of human rights or any other field, were not within the Organization's competence. That question was left to be decided by the States involved and the General Assembly.

37. The logical conclusion therefore was that a State involved in a situation in which human rights were concerned, and which was before the General Assembly, could not *a priori* deny the Assembly's competence on the ground that the matter fell within the sphere of human rights which was essentially a field for domestic jurisdiction. A State in that position could merely attempt to prove that the matter was essentially one of domestic jurisdiction.

38. It was necessary to decide what criteria would be adopted in discussing the question whether the situation in South Africa was essentially a matter of domestic jurisdiction. There were no criteria in the Charter but its spirit and even its letter made it possible to identify certain categories of situations which fell essentially within the competence of the United Nations. Serious violations of fundamental human rights, committed consciously by governments, affecting large sections of the population and deeply resented by them, could not be considered as mere matters of domestic jurisdiction because they were likely to have international repercussions.

39. It was true that that criterion was subjective, but it had its objective counterpart in Article 14, which made it clear that violations of human rights must necessarily fall within the Organization's competence and could not therefore be covered by the provisions of Article 2, paragraph 7.

40. It appeared to him, and to many representatives who had spoken before him, that the treatment of people of Indian origin in the Union of South Africa fulfilled the conditions which he had enumerated and that the South African Government was thus in error in invoking the provisions of Article 2, paragraph 7.

41. It was possible to adopt another criterion and to prove that the situation in South Africa was not a matter of domestic jurisdiction. One of the aims of the Charter was to develop friendly relations among States. The treatment of hundreds of thousands of people of Indian origin in the Union of South Africa was a matter of immediate concern to the Governments and peoples of India and Pakistan. Any grave violation of their civic, political or social rights therefore could not be conducive to friendly relations between India and Pakistan on the one hand and the Union of South Africa on the other. It was therefore clear that

a question likely to affect friendly relations between States could not be regarded as a matter of domestic jurisdiction.

42. Yet a third criterion could be applied, that of the peaceful co-existence of groups of peoples and nations, upon which the Charter laid emphasis. He was thinking of relations between the peoples of Asia and Africa on the one hand and the western races on the other. The South African Government's attitude to the indigenous inhabitants of the Union and to the people of Indian origin in its territory was regarded by Asian and African peoples as a fresh demonstration of the hostility of the western world towards them and of the desire of a European minority to subdue an Asian and African majority. That attitude was displayed when a European minority, in the guise of a colonial Power, imposed its will on a people far more numerous than itself. It was displayed when the minority existed as a foreign colony in an African country under the domination of a European Power and endeavoured, through the support of that Power, to obtain privileges and position, as in North Africa. It was also evidenced when a minority established itself in Africa as a group in power and endeavoured to retain its privileged position at the expense of the greater part of the population of the country as was the case in South Africa.

43. That attitude, whatever form it took, was an obstacle to the peaceful co-existence of nations and was therefore at variance with one of the principal objectives of the United Nations. It was thus abundantly clear that the treatment of people of Indian origin was essentially a matter to be discussed by the United Nations. He hoped that the South African representative would lay aside the armour of Article 2, paragraph 7, and discuss the matter in a spirit of true co-operation.

44. Mr. GARCIA OLANO (Argentina) said that his country had pursued a policy of racial equality both in its constitution and in practice. It regretted the failure of the Good Offices Commission to bring about a negotiated solution, for it believed that conciliation was the best method.

45. Turning to the arguments for and against the competence of the United Nations to deal with the question under the Charter, he expressed his Government's conviction that the limitation in Article 2, paragraph 7, extended to all the activities of the United Nations, with the exception specified in the last part of that paragraph and others derived from a proper interpretation of the limitation itself. Thus the sole basis for deciding that Article 2, paragraph 7, was inapplicable was the Article itself in the light of the circumstances of each case. Accordingly, Argentina had voted in favour of including the question of the treatment of Indians in South Africa in the agenda of the Assembly and would vote in favour of continuance of the Good Offices Commission.

46. To meet the objections raised to the condemnation of South Africa in the joint draft resolution, Argentina agreed with France that the text should be voted upon paragraph by paragraph. Such a condemnation would not facilitate the work of the Good Offices Commission.

47. Mr. TOV (Israel) expressed his Government's gratification at the perseverance of the Committee. Had there been the same sense of alarm at another period in contemporary history, another tragedy born

of man's persecution of his fellow might have been averted.

48. The statements of the representatives of India and Pakistan showed that their sole desire was for a satisfactory settlement, not only because of the bonds that linked them with the Asian community in South Africa, but because they recognized that the issue was vital for human beings everywhere. Various other delegations had also demonstrated that the human being was the essential factor in the equation of peoples, and that the key to the equation was to be found in the Charter.

49. In the name of his people, he thanked those delegations which had expressed sympathy and contrition with regard to the sufferings of the Jewish people, the sacrificial victims of persecution throughout history. Sometimes tyrants and other peoples seized with barbaric cruelty had bled the Jews on the wheels of history. But the Jews had maintained their faith in man, as they still retained faith in nations, and the vision of the prophets continued to guide them. And with the remnants of their people, salvaged after the last great sacrifice, they had, with renewed fervour, rebuilt out of the ashes of the crematoria, the phoenix which was the State of Israel, and their existence as a civilized people eagerly seeking, together with other nations, a means of achieving peace and the harmonious co-existence of nations.

50. South Africa deserved great admiration for its dynamic participation in international affairs, the brilliant contribution of its statesmen to the building of the United Nations and the valiance of its soldiers in the defence of freedom. He was certain that the South African representative would heed the appeals being made to him and would appreciate the constructive elements in the arguments adduced.

51. Without going into the merits of the joint draft resolution, he wished to reaffirm his delegation's belief in direct negotiations, inside or outside the United Nations. The negotiations should take place in an atmosphere imbued with the aspirations of all peoples for progress. It was the obligation of all States to speed that progress, which nothing could stop, to awaken dormant peoples to a recognition of their interests, and to provide an example of the peaceful settlement of disputes. In that spirit, he associated himself with those who would persuade the South African Government to join with India and Pakistan in seeking a solution.

52. Mr. TATTENBACH YGLESIAS (Costa Rica) could not agree with those who wished the United Nations to abandon its efforts to attain a solution, in view of past failures. It was a recognized fact that South Africa's continued policy of discrimination against its Asian community created a situation detrimental to friendly relations between nations, which might extend so far as to jeopardize peace. It was also a fact that the observance of human rights and the elimination of racial discrimination were two of the fundamental purposes of the Charter. The uneasy situation in South Africa arose from violation of the principles of the Charter by the Union Government. Accordingly, the United Nations had not only the right, but the duty to intervene. The right of a government to adopt whatever legislation it deemed necessary in its own country was not contested; it should not, however, be permitted to enact laws which contravened the solemn obligations entered into under the multilateral treaty known as the Charter. By that international

commitment, a government renounced a portion of its sovereignty.

53. The South African Government was faced with the problem arising from the existence side by side of different racial and ethnic groups, with differing ways of living and thinking. It was a practical administrative problem which had no doubt led the Union Government to adopt its policy of racial discrimination. There was no justification for that policy, or for the laws enacted to put it into effect. While he appreciated the patience and dignity of the Union representative under fire, he unreservedly supported the position of India and Pakistan. The very existence of discriminatory laws, in particular the Group Areas Act which was now in force, was adequate justification for intervention by the United Nations. The pending Immigration Regulation Amendment Bill would be another affront to the Asian community. The General Assembly could not pass over in silence so grave a threat to a minority, a new expression of the spirit of racial discrimination which was at the core of a government's policy.

54. While he did not deny that the existence of a minority of Asian origin created difficulties for the people of European origin in South Africa, he would point out that there was a natural tendency for immigrant minorities with different customs to become integrated in the country in which they had settled. That was a logical sociological development which could not be stopped. Moreover, such minorities also tended to aspire to form part of the nation. South Africa should want to encourage that process for it constituted the basis of national unity. In the American States, the "mestizo", who constituted the majority of the population, was the result of that process of assimilation and integration and represented the national consciousness. No official policy could fail to take into account his needs and aspirations.

55. In general he agreed with the joint draft resolution, but reserved the right to comment on it in detail later.

56. Mr. ALLOUNI (Syria) noted that the South African position hinged on the interpretation to be given to Article 2, paragraph 7, of the Charter. It would be a dangerous precedent to allow any single Member State to determine whether, under that provision, a matter was essentially within domestic jurisdiction. That decision should be made by the collective judgment of the United Nations as a whole. It was significant that Articles 10 and 11 empowered the General Assembly to discuss any matter within the scope of the Charter.

57. South Africa had argued in another Committee that Article 10 could not be invoked as superseding Article 2, paragraph 7, which excluded precisely questions essentially within domestic jurisdiction. Yet, it had also held, in the case of the complaint against Hungary, Romania and Bulgaria for violation of human rights, that the matter was not one of domestic jurisdiction, but rather a question of a contractual obligation. Further, in the case of the Chilean complaint against the USSR regarding treatment of the wives of foreign diplomats in the Soviet Union, it had conceded the right of the United Nations to intervene in order to maintain established diplomatic practices. Thus, it had applied different standards in those cases from that which it invoked to substantiate the claim

that the General Assembly had no competence to deal with the problem under discussion.

58. Moreover, it was clear that the Union Government had violated as early as 1946, a contractual agreement with India by enacting the Asiatic Land Tenure and Representation Act restricting ownership and occupation of land. When India's efforts to discuss the problem at a round-table conference had failed, the Assembly had intervened. It had done so principally in order to secure respect for a contractual obligation

entered into by South African and to maintain established diplomatic practice between the two countries. The criteria employed in justifying intervention by the United Nations should be the same in all cases.

59. Syria therefore associated itself with Lebanon and many other countries in expressing the hope that the Government of South Africa would modify its views about the applicability of Article 2, paragraph 7, in the present case.

The meeting rose at 5.30 p.m.