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

**The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa: report of the Commission appointed to study the racial situation in the Union of South Africa (A/2505, A/2505/Add.1, A/2505/Add.1/Corr.1, A/2505/Add.1/Corr.2, A/AC.72/L.13, A/AC.72/L.14, A/AC.72/L.15) (*continued*)**

[Item 21]\*

1. Mr. RODRIGUEZ FABREGAT (Uruguay) considered that the Committee's debate on South Africa's racial policies would have great value for the work of the United Nations. It had been maintained on a high level and excellent contributions had been made from different points of view, though all were inspired by the single objective of reaching a solution in line not only with humanitarian principles but with the obligations incumbent on Member States under the Charter.
2. Although he fundamentally disagreed with the Colombian representative's attitude, he agreed with him that the debate had three distinct and special features: the issue of competence, the report (A/2505, A/2505/Add.1 and Corr.1 and 2) of the Commission appointed to study the racial situation in the Union of South Africa, and, most important, the universal character of the problem of racial discrimination involved; for the universal aspect of discrimination was being invoked by those who challenged the joint draft resolution (A/AC.72/L.14) calling for continuation of the United Nations Commission. Yet, it was grossly unfair to draw a comparison between the forces attempting to combat discrimination and those attempting to make it, by legislation, a permanent institution, for the latter were deliberately departing from the principles of the Charter in order to maintain conditions that were incompatible with those principles and were overwhelmingly rejected by world opinion.
3. He reminded the Committee of the historical development of the South American countries where the vestiges of slavery and discrimination practised under colonialism had finally been stamped out by the armies

of liberation, and free institutions and sovereign nations had emerged as a result of the struggle for emancipation. The new democratic nations of South America had enshrined in their constitutions the principles of the freedom and equality of all men; they had conferred upon all the same opportunities, privileges and responsibilities. The Charter of the United Nations echoed the confidence reposed by the South American nations in respect for human rights as the cornerstone of their democratic development and the basis for the system of the interdependence of sovereign nations made necessary in the modern era. Because they were keenly aware of their own history and believed implicitly in the values proclaimed in the Charter, the South American countries were shocked and pained by those who were attempting to establish and perpetuate their racial superiority and to set themselves above peoples of other colours, other religious beliefs and other political or social systems.

4. While it was true that the specific problem before the Committee was that of race conflict in the Union of South Africa, there was no reason for not incorporating in the joint draft resolution a reference to discrimination in whatever part of the world it might exist. The Charter had proclaimed the universality of the principles of non-discrimination, and the draft resolution would in fact be strengthened by such a reference and might encourage all governments to work towards the mitigation and ultimate abolition of discrimination wherever it might still prevail. Many governments were at the moment engaged in such efforts. They faced a difficult task, for it was not easy to uproot customs deeply rooted in a country's social and economic structure or to reform out-moded and iniquitous institutions and adapt them to new, enlightened social concepts. Therefore, those governments should be given every encouragement, especially by the United Nations in which peoples of all races, colours and beliefs were striving together to find truth and justice. That objective was most earnestly sought in the Fourth Committee for the multi-racial and multi-lingual peoples of Non-Self-Governing and Trust Territories whose national consciousness and whose awareness of their rights and freedoms were being nurtured by the nations administering them.

5. The very wording of the Charter illustrated the universal desire to change antiquated concepts. The Preamble, instead of referring to plenipotentiaries as had been the case when the despots of the past had concluded truces with their enemies and coldly decided the fate of peoples without regard for human rights, spoke of "the peoples" who were determined to carry out the objectives of the Charter, peoples of different colours, customs, languages, races and beliefs. In the Charter, for the first time, human rights had been consecrated in the name of the peoples.

6. Respect for human rights was an international obligation binding upon all States signatories of the

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

Charter. Article 2, paragraph 7, could not nullify that obligation; it had been written in as an exception to the general system provided in the Charter and should be interpreted as an exception. Although it was conceded that no State had the right to interfere in matters entirely governed by the domestic legislation of another State, or "essentially" within its domestic jurisdiction, that prohibition, seen in the light of the international standard of respect for human rights laid down in the Charter, could not be regarded as gainsaying the Assembly's competence in the present case. He had great respect and admiration for South Africa and its representatives and was inspired not by rancour or enmity, but solely by the principles of the Charter. Yet, even supposing Mr. Jooste could successfully plead exception with regard to that problem of South Africa under Article 2, paragraph 7, that exception would still not apply to the problem under discussion or to that Government. South Africa was bound to respect human rights not only as a signatory of the Charter, but because, as a mandatory Power on which the League of Nations had conferred a "sacred trust" in respect of another African territory, it was bound by international jurisdiction. In conferring that mandate—just as when the United Nations placed a territory under trusteeship—the League had made South Africa responsible for the advancement of the peoples of the territory including the coloured races. It was therefore legitimate to expect that the laws applied to the peoples of that territory should be open to scrutiny by an international organization; South Africa should not be permitted to exercise its mandate without obligation merely by appealing to Article 2, paragraph 7. That was especially important as it might with justice be deduced that the discriminatory legislation imposed by a government in its own territory and on its own nationals and citizens would be applied in even greater measure to a people living outside that territory under trust.

7. A State could legitimately plead an exception under Article 2, paragraph 7, only in matters in which the United Nations did not require the co-operation of the signatories of the Charter. It was significant that in earlier debates on questions of human rights, as in the case of the alleged violation of those rights in Hungary, Bulgaria and Romania, delegations which held the Assembly to be incompetent to deal with the racial policies of South Africa, had justified United Nations intervention, and had voted for resolutions giving form to that intervention. Uruguay, on the contrary, had consistently upheld the Assembly's right to discuss and adopt resolutions in all questions relating to human rights, for they remained identical irrespective of the specific situation which might have led to their violation.

8. He found it difficult to believe that any argument could justify discrimination, and invited the South African delegation, which appeared to find it so excellent a social phenomenon, to expound its virtues, to demonstrate how the segregation of races resulted in greater benefits to humanity than the mingling of races and how white supremacy was intended to ensure progress in South Africa. He cited many examples of how the mixture of races in South America had enriched the culture of that continent and produced great thinkers, writers, sculptors and popular leaders. The *mestizo* population of South America was determined to defend its hard-won freedom.

9. He appealed to the South African delegation to abolish its discriminatory legislation, for those laws were condemned by the same Charter in which Article 2, paragraph 7, appeared. The issue of competence had been resolved three or four times in the United Nations in connexion not only with the present item, but with other issues relating to human rights. The Assembly, as a result of its previous decision on the racial policies in South Africa, had appointed a Commission to study the matter. It could not now say that it had been wrong in taking that action and that the Union Government had been justified in refusing to co-operate with the Commission. Uruguay would, accordingly, vote against the South African draft resolution (A/AC.72/L.13).

10. In conclusion, he expressed his appreciation of the Commission's report, which was an exceptionally valuable document, especially in view of the obstacles raised by the Union Government. Nevertheless, as the issue of competence should be regarded as having been definitely settled, there had been no need for the extensive treatment of it contained in the report. As the report was not final, Uruguay would vote for the continuance of the Commission. It took issue with the argument that by continuing the Commission despite the Union Government's stubborn denial that it was constitutional the United Nations would lose prestige. On the contrary, the persistence of the United Nations in defending human rights everywhere was in line with the principles of the Charter. The problem of discrimination was of the utmost importance to all peoples and its solution should be sought by common agreement, since that was the best way in which to serve the interests of mankind and of the Charter.

11. Mr. GARCIA OLANO (Argentina), explaining his delegation's position on the two draft resolutions before the Committee, said that it had already expressed its view on the South African case for non-competence, based on Article 2, paragraph 7, of the Charter. At the 457th plenary meeting the Argentine representative had maintained that paragraph 7 was of strict and absolute application.

12. It was of strict application because it served as an express guarantee against intervention by the Organization in the domestic affairs of its Members. The Charter was a legal instrument which imposed certain obligations and granted certain rights, but since the Organization was founded on the principle of the sovereign equality of all its Members, it could not but adopt the fundamental corollary inseparable from sovereignty and had consequently incorporated in its Charter a provision prohibiting intervention in matters essentially within the domestic jurisdiction of its Members.

13. It had been said that the present tendency was to broaden the domain of international law. That was true, but the inference that the domain of domestic jurisdiction was growing narrower was not valid. His delegation recognized the changes which had occurred but did not accept any arithmetical formula. It believed that the possibility of intervention evoked, in the present complex international world, the most stubborn resistance on the part of those who viewed with misgivings those fresh aspects of the problem which past experience showed to have left behind feelings which it would be very difficult to eradicate. That consideration largely accounted for the modification introduced into the relevant provision of the Charter when, at the

San Francisco Conference, the term "solely" had been replaced by the more restrictive word "essentially" which appeared in the final text.

14. The provision contained in Article 2, paragraph 7, was of absolute application because it stated categorically that nothing in the Charter could authorize the United Nations to intervene. The restriction therefore covered any and all of the other provisions of the Charter. It followed that all the principles of the Charter must be applied by the organs entrusted with their implementation, with due respect for the limits of domestic jurisdiction.

15. The power to undertake studies, to initiate action by the United Nations in the various spheres of its competence and to make recommendations must be subject to the same restriction. Even so, the scope of the Organization's activities was immense and it could stimulate progress in matters within its competence. To accept the contrary would mean the creation of a supra-national authority which might finally set itself up as a supreme tribunal and frustrate the free expression of the distinctive characteristics of each people. His delegation did not believe that that had been the intention of the authors of the Charter. It believed that the principles of the Charter could only be fulfilled through co-operation and by making the Organization a centre for harmonizing the efforts of Member nations to achieve their common objectives. Consequently, his delegation took the view that the United Nations could deal with a question only when that was permissible under the provisions of Article 2, paragraph 7.

16. That rule did not apply when there was clear evidence that the question was not within the domestic jurisdiction of any State. If the question of racial segregation in South Africa were examined in the light of Article 2, paragraph 7, of the Charter, his delegation felt doubtful whether the discussions at San Francisco or the wording of that Article could be extended to cover the case of a large indigenous majority which was deprived of sovereign rights. The prohibition against intervention in domestic jurisdiction was founded on sovereignty, which belonged exclusively to the people. Where the majority of the people did not exercise sovereign rights, there could be no question of domestic jurisdiction within the meaning of Article 2, paragraph 7. The expression "people" was intended to signify a collective whole, without discrimination.

17. Dealing next with the joint draft resolution, he said that even if the Assembly's competence had been beyond doubt, that would not necessarily imply that recommendations should be made, since in every case it was necessary to consider whether a resolution was opportune or not. If it was opportune to adopt a resolution, the Assembly must exercise its powers with great caution, bearing in mind the particular circumstances of the case, the limitations arising from the fact that it could do no more than make recommendations and the logical consequence that its recommendations would have practical effect only if there were some willingness on the part of the parties directly concerned to accept them. His delegation attached paramount importance to conciliation as opposed to unilateral expression of opinion, which all too frequently overlooked the complicated circumstances of the problem under discussion. Consequently, his delegation doubted whether it was opportune to extend the mandate of the Commission established by res-

olution 616 (VII), since the negative attitude of the South African Government afforded little prospect of further progress. At the same time, his delegation's position with regard to the basic question remained unchanged: racial discrimination in any form was abhorrent to the Argentine people.

18. Mr. LOUTFI (Egypt) congratulated the authors of the report on their exhaustive study of the problem.

19. Since the South African delegation had raised once again the question of competence, despite the existence of resolution 616 (VII) which officially recognized the Assembly's competence, he was constrained to say that in his delegation's view the Assembly was the appropriate authority to decide whether a matter raised by a Member State was or was not within the domestic jurisdiction of the Member State concerned. The Assembly, therefore, had already settled the question of competence by adopting resolution 616 (VII).

20. The arguments which the Committee had heard had contained nothing likely to induce delegations which had voted in favour of that resolution to change their minds. It was true, as the Commission had pointed out in its report, that the theoretical position taken by countries on the question of competence often depended on political factors pertaining to the particular case in point, but he doubted whether, in the present case, there were any such factors as might induce delegations to review their position in that respect.

21. Chapters V and VI of the Commission's report described the racial situation in South Africa and showed that it was at variance with the principles of the Charter and of the Universal Declaration of Human Rights. A point calling for special emphasis was that the position of the non-European population had deteriorated since the signing of those two documents; instead of implementing the clauses on human rights contained in those undertakings, the South African Government had enacted further discriminatory legislation. The continuance of such a situation, particularly at a time when peoples all over the world were becoming more and more conscious of their rights, was likely to jeopardize the peace and stability of the African continent; in that connexion, he agreed with the views expressed in paragraphs 900 and 901 of the Commission's report.

22. His delegation had certainly no wish to be regarded as sitting in judgment on the Union of South Africa; it had joined in submitting the joint draft resolution in the hope that it could assist the South African Government to find a humane solution in keeping with the Charter and the Universal Declaration of Human Rights before the stability of the African continent was further jeopardized. His delegation had no desire to intervene in South Africa's internal affairs.

23. The South African draft resolution invited the Committee to declare itself not competent; it was skillfully worded, but the questions listed there as being within the jurisdiction of a Member State were not necessarily always so. Some of them had formed the subject of international agreements between States and were thus no longer entirely within the domestic jurisdiction of a State which had entered into such agreements. During the discussion of the treatment of people of Indian origin in the Union of South Africa, it had been found that the status of those people had been dealt with in international agreements between the Indian and South African Governments, so that they

were no longer completely within South Africa's domestic jurisdiction. Moreover, the Commission's report, where it dealt with the questions mentioned in the South African draft resolution, did so merely from the point of view of racial discrimination in those matters.

24. His delegation would therefore be unable to support the South African draft resolution. His views on the joint draft resolution had already been adequately expressed by the representatives of India and Pakistan.

25. Mr. QUIROS (El Salvador) said that his delegation's position had been explained during the previous session, when it had voted against the South African draft resolution (A/AC.61/L.6) and in favour of the draft resolution which had later become resolution 616 (VII). That position had not changed, and his delegation remained convinced that the Committee was fully competent, in view of the provisions of Articles 1, paragraph 3, 2, paragraph 2, 10, 13, 14, 55 and 56 of the Charter. Such competence was in conflict with Article 2, paragraph 7, only if the latter was interpreted very strictly, indeed in such a way as to make a large number of the Articles of the Charter inoperative, leaving them as a mere statement of sentimental principles. His delegation therefore entirely agreed with the Commission's view, expressed in paragraph 254, sections 1 and 2, of its report, to the effect that there was no doubt of the Assembly's power to undertake investigations and make recommendations concerning the enforcement of the principles of the Charter, particularly where matters concerning human rights were involved and in a case of systematic discrimination based on a doctrine of racial inequality which the authors of the Charter had been especially anxious to prohibit. Furthermore, the controversial question of competence had already been decided by the Assembly. The South African representative was perfectly at liberty to reintroduce the question, even in a new form, but the Committee would no doubt stand by its previous opinion.

26. The Assembly's competence in the case under discussion could only serve as a precedent for others of similar nature and importance and not for isolated cases of violation of human rights in countries where the citizens had access to legal means of redress. The latter, however deplorable, had no features which would put them in the class of international questions. In that respect, his delegation agreed with the Chilean representative's statement.

27. With regard to the substance of the matter, his delegation had already described, in connexion with the treatment of persons of Indian origin in the Union of South Africa, the historical traditions and constitutional principles by which El Salvador was guided and which caused it to combat any sort of discrimination, especially discrimination on account of religion or colour. His delegation was aware of the complexity of the question in certain countries. But the Charter had established certain principles and obligations, including that of seeking a solution, slowly but surely, of the difficult problems arising in various countries. Such international co-operation was one of the fundamental principles of the United Nations.

28. Thus, if a country practised racial discrimination and, far from taking action to eliminate it, actually introduced legislative measures to confirm and extend it as a basic part of its policy, there could be no choice but to agree that such action was contrary to the purposes and principles of the Charter.

29. Those were the ideas which would guide his delegation in voting on the draft resolutions before the Committee.

30. In conclusion, he expressed his delegation's profound friendship for South Africa, which had made notable contributions in the Second World War and in Korea, and stressed that his attitude was dictated purely by his country's conviction on the matter of principle.

31. Mr. CASTILLO ARRIOLA (Guatemala) said that the Guatemalan delegation was one of the authors of the joint draft resolution. His delegation had from the outset been in favour of action by the United Nations within the limits of its powers, in other words had been in favour of asking the South African Government to adjust its policies in accordance with the standards of the Charter, with due regard to its special domestic circumstances. Those policies were generally recognized to constitute a deliberate and systematic violation of human rights, threatening not only domestic justice and peace, but international peace as well.

32. It was amazing that the spirit of the Charter, with its unforgettable affirmations of human rights, to which South Africa had itself contributed, should now be flatly denied by that country's present Government, while other countries known to be champions of fundamental freedoms were twisting the texts in order to make them fit biased interpretations. His delegation stood by the principles of the Charter in all their integrity, which should be striven for, not against, both on the national and international plane. There had been no opposition to the United Nations making the protection of human rights a part of international law, and the Universal Declaration of Human Rights had been intended as a mandatory guide to governments in determining their national policy and legislation. It had no coercive force, but it represented an authoritative interpretation of the Charter, which from any point of view was binding upon its signatories, and towards which Member States should be adapting their legislation. Whatever might be the future attitude of South Africa and whatever resolutions the Assembly might adopt, world opinion would condemn a Member State which did not adjust its conduct to the standards of present-day civilization as codified in the Charter and repeatedly endorsed by the Assembly.

33. The Guatemalan delegation categorically reaffirmed its opinion that after the Charter had been ratified and the Member States had thus committed themselves to the positive development of human rights without discrimination in their respective territories, it was the constitutional duty of the United Nations to watch over the observance of those rights in all parts of the world. The provisions of Article 2, paragraph 7, could not and should not prevent the Assembly from dealing with violations of fundamental human rights, since they did not represent an isolated or absolute principle but had to be read in conjunction with the rest of the provisions of the Charter, which contained equally fundamental principles clearly showing that after the adoption of the Universal Declaration of Human Rights those rights had moved from the domestic into the international sphere. His delegation did not share the opinion that while the Assembly was competent to discuss those matters in a general way, it should not refer specifically to a country by name. It so happened that deliberate discrimination was confined to a single case, and the

Assembly should surely not ignore it because it was unique.

34. It was gratifying to note that there was still a substantial section of international opinion in favour of preserving the sovereignty of the Charter in matters of human rights, but disappointing that there had been some defections based on flexible interpretations of the Charter in deference to political considerations. His delegation was among the first group, and considered it unnecessary to plunge into technical legal discussions, as previous delegations had done, since it appeared unlikely that the second group could be influenced to modify its views. There were evidently two irreconcilable schools of thought, neither convincing the other, and it could only be hoped that there was a large majority that was opposed to any violation of human rights.

35. He congratulated the Commission on its work, especially in view of the difficulties it had encountered through South Africa's refusal to co-operate. It might be that the core of the problem would manifest itself in a terribly dramatic manner.

36. The Guatemalan delegation stressed that its view was based on the principle of non-intervention in internal affairs. No country was more jealous of its national sovereignty, but sovereignty should be exercised in a proper manner, in accordance with the reasonable limits imposed by society and international agreements freely arrived at. It should never become an instrument of oppression or of the violation of generally accepted standards. South Africa's "juridical" position, which was neither juridical nor just, had been modified by the admixture of a new element, which, however undeniably valid in itself, had been added merely in order to sow confusion and to divert attention from the real problem with which it had no connexion. Certainly, no delegation had the slightest intention of denying a Member State's right to legislate on matters such as those mentioned in the South African draft resolution. But it was out of order to propose that the Assembly should declare the power to legislate to be essentially within the domestic jurisdiction of a State, since no item on the agenda, as approved, could be held to include that subject. It was even more mistaken to strive for a declaration by the General Assembly that the freedom to pass laws was the same thing as racial discrimination, since that would mean that any other State could have been accused of discrimination.

Unfortunately, there was reason to fear that some delegations in their anxiety to find a way out of their dilemma might seize on that false syllogism as an ideal formula, but the majority would certainly have clearly seen the fallacy of that argument.

37. The second premise, that Article 2, paragraph 7, prevented any sort of intervention, was equally invalid, inasmuch as the United Nations was the guardian of human rights. The conclusion of the draft resolution, which was based on false premises, was also fallacious. Nothing would be achieved even if it were adopted, since its only effect would be to confirm a Member State's undoubted right to pass domestic legislation. But what then would become of the violation of human rights? Concern for human rights had become an essential feature of the present time ever since a war had been fought over doctrines of racial superiority. Moreover, since South Africa had signed the Charter, the principles contained therein had become part and parcel of the domestic legislation of South Africa.

38. For those reasons, the Guatemalan delegation would vote against the South African draft resolution, which was out of order and designed only to confuse the issue. That was most regrettable, since it had been hoped that after so much discussion over the years that Government might afford a glimmer of hope that it would of its own will alter its policy so as to improve the situation. In the case of persons of Indian origin, it had at least been possible to recommend to the interested parties to negotiate, but in the case of *apartheid* the dead-lock remained absolute, although almost all Member States were affected.

39. In contrast, there was before the Committee the joint draft resolution, of which Guatemala was one of the authors and which dealt purely with the question of principle. There was no intention of intervening in South Africa's domestic affairs. It was appreciated that the South African position was difficult, and that its policy was based on a doctrine held by a large part of the population. The object of the draft resolution was only to ask the South African Government to direct its policy in accordance with accepted standards concerning human rights and to co-operate with the Commission. As one of its authors, the Guatemalan delegation would be glad to consider any amendments thereto.

The meeting rose at 12.55 p.m.