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CONTENTS

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. DOZY (Netherlands), observing that the General Assembly had been debating the item since 1946 without result, reminded the Committee of the warning uttered by the United Kingdom representative at the 443rd plenary meeting that it was such unproductive debate that undermined the prestige of the United Nations. His delegation had followed with much concern a growing tendency on the part of some States to criticize the internal affairs of others while overlooking their own shortcomings. The fact that discrimination of one sort or another was practised in many countries could not be ignored, but accusations and recriminations would not serve to eliminate it or to promote world peace and security. On the contrary, as the same United Kingdom representative had pointed out, they often forced the parties to a controversy to adopt rigid positions and to indulge in acrimonious propaganda for domestic consumption. That danger should not be underestimated.

2. In the view of the Netherlands, it was an accepted rule of law that a matter ceased to be within the domestic jurisdiction of a State if the substance was subject to the provisions of international law, but it was debatable whether the issue of racial discrimination could be placed in that category. Moreover, in view of the wide differences of opinion regarding the meaning and scope of Article 2, paragraph 7, of the Charter, the Assembly should proceed cautiously in the contested field of what was and what was not essentially a matter of domestic jurisdiction and refrain from forcing the issue, lest abuse and confusion should result, and more be lost than gained.

3. The adoption of resolutions rejected beforehand by one of the parties on legal grounds was not calculated to foster the atmosphere of goodwill without which a solution was impossible. But that did not mean that the Netherlands was indifferent to the outcome of the present controversy. Bound as it was by fraternal ties with the Union of South Africa and by feelings of friendship and admiration for India and Pakistan, his country was primarily concerned with the human problem. Being traditionally a country of asylum and abhorring any form of discrimination, it sometimes had difficulty in understanding the racial policy which was the origin of the problem under discussion. Nevertheless, even though the Netherlands delegation considered that the Assembly should not refuse to discuss an issue connected with one of the basic principles of the Charter, it could not support the joint draft resolution (A/AC.72/L.10) because it very much doubted whether the United Nations had the right to demand that a Member State alter its legislation.

4. It was encouraging to note that South Africa was prepared to meet the other two States concerned at a round-table conference, although its legal position would preclude such a conference being held under United Nations auspices. It was also encouraging that the Pakistan representative had expressed his Government's readiness to take part in such a conference upon certain conditions. It was to be hoped that the parties would come together and that, given goodwill and understanding on both sides, their negotiations would be successful.

5. Mr. Y. MALIK (Union of Soviet Socialist Republics) said that his Government's attitude to the complaint of India and Pakistan against the Union of South Africa was based on recognition of the fact that the Union had violated the agreements of 1927 and 1931 with India under which the Union had undertaken to guarantee normal living conditions for the Indian community within its borders. As the matter was dealt with in bilateral agreements the argument that it was exclusively within the domestic jurisdiction of South Africa was without foundation. Moreover, its continued consideration by the General Assembly was evidence that the Assembly recognized it as an international issue. The USSR was therefore convinced that the United Nations was competent to deal with it.

6. It had been made clear during the discussion that racial discrimination continued to be practised against people of Indian origin in South Africa and that the Union Government was ignoring Assembly resolutions and enforcing fresh discriminatory measures in violation of the Purposes and Principles of the Charter. In line with its support for all measures calculated to abolish discrimination of every kind and with its guiding principle of the equality of all citizens, the USSR would vote in favour of the joint draft resolution.

7. Mr. WILSON (New Zealand) recalled that in 1946, when the issue had first arisen in the General Assembly, Field Marshal Smuts, while denying the right of the United Nations to intervene, had suggested that the Assembly seek an advisory opinion from the International Court of Justice on the question whether the matters covered by India's complaint

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

were, under Article 2, paragraph 7, of the Charter, essentially within the domestic jurisdiction of South Africa. The United Kingdom, the United States and Sweden had embodied his suggestion in an amendment (A/C.1&6/20) to an Indian draft resolution pointing out that a decision based on an authoritatively declared juridical foundation was the one most likely to promote realization of the purposes of the Charter and secure a lasting and mutually acceptable solution. But that draft resolution had been rejected, partly perhaps because it had been regarded as partisan, but primarily because the Assembly had wanted to avoid delay. Delay had been avoided, with the result that the Assembly was still debating the topic seven years later. By excluding, at the outset, serious consideration of the question of competence, the Assembly had virtually closed the door on any possibility of co-operation with the South African Government on which depended any progress in the direction desired by India and Pakistan. Had the joint draft resolution been adopted, many aspects of the problem which continued to be the subject of prolonged and obscure controversy would have been clarified. If the International Court had declared that the Assembly had no competence, the Assembly would have desisted from further consideration of the problem which would then have been dealt with through diplomatic channels and would surely be no further from solution. If, on the other hand, the Court had declared the Assembly competent, the latter would have had far greater moral authority in discussing the problem with the parties. In fact, the Assembly's resolutions on the subject, which, it had been asserted, reflected the world conscience, did not bear the mark of a true world judgment, they had not been adopted —in the words of St. Augustine—"in calm of mind".

8. But difficulties inherent in the problem went beyond the question of competence. Even if the Assembly had decided to proceed on authoritatively declared juridical foundations, the difficulties would not necessarily have been resolved. The Assembly's range of effective action was, at best, narrow. It could not cause persons of Indian origin in South Africa to be other than South Africans. It could not place them under a kind of condominium of the three parties or of South Africa and the United Nations. The solution rested with South Africa itself, regardless of the possible standing of the other two parties or of the United Nations.

9. New Zealand had felt able to support only one of the resolutions adopted by the Assembly on the subject: namely, resolution 265 (III) of 14 May 1949 inviting the parties to enter into discussions without United Nations mediation, without time-limits and without the need to report to the United Nations. A reference to its Charter and the Universal Declaration of Human Rights, such as that contained in that resolution, represented the extreme limit to which the United Nations should go in laying the basis for a possible solution. The Pakistan representative's remarks at the previous meeting suggested that an even more elastic formula might be found.

10. With regard to the resolution of the Imperial Conference of 1918 to which the Indian representative had referred at the 13th meeting, New Zealand continued to regard that resolution as in full force in its own relations with other Commonwealth governments and endeavoured to observe it.

11. New Zealand was less interested in the formal wording of resolutions than in the possibility for friendly negotiations. It was anxious for practical results which would improve relations between the three States members of the Commonwealth. From a realistic point of view, it must be recognized that such an improvement would take time. Action taken by the Assembly thus far had not advanced a solution of the problem; the procedure of setting time-limits, or enforced mediation had proved, over a period of seven years, to be a blind alley and New Zealand had the strongest doubts about the efficacy of the joint draft resolution before the Committee.

12. Mr. SHABANDER (Iraq) deplored the human tragedy that was being played out in Africa ever since the first landing of Europeans on that continent. An often cruel and unscrupulous white minority was oppressing a large, defenceless black majority. That contact had led to the emergence of a third element consisting of persons of mixed blood, who formed a separate class and with whom, for the sake of simplicity, the South African whites had classified immigrants from Asia. That was the origin of the problem before the Committee.

13. The report (A/2473) of the Good Offices Commission was a record of no progress, owing to the South African Government's negative attitude. No progress would ever be made unless that attitude changed. The delegations concerned had said their say. The Committee had listened to complaints which had remained unrefuted and to explanations based upon an incorrect interpretation of Article 2, paragraph 7, of the Charter. The situation was abnormal and dangerous and might have harmful consequences not only in the Union of South Africa and the African continent but perhaps throughout the world as well. It was dangerous to ignore just claims, to humiliate and insult human beings by discriminatory legislation and then to attempt to hide behind Article 2, paragraph 7. The Charter and the divine laws proclaimed the equality and brotherhood of mankind.

14. There was no desire on the part of any delegation to irritate the South African representative or his Government, but it was hoped, by friendly intervention, to convince them that it was dangerous for any government to rely on outworn legal maxims when faced by the awakening of the oppressed masses and that it would be wiser to keep pace with the times and change one's ways peacefully than to attempt to justify them. It could not be denied that in the mid-twentieth century, segregation, social discrimination, injustice and cruelty existed in South Africa, and elsewhere on that Continent, and were sanctioned by the Union Government, which claimed that everything it did was for the common good, that it knew its own affairs best and that the Assembly had no right to interfere in those matters as they lay within its domestic jurisdiction. Apart from the colonial Powers, the rest of the world thought differently. Race relations could not be regarded as a matter of domestic concern.

15. To illustrate the full range of the problem, he would venture to refer to a case of which he had personal experience, that of Professor Ehrlich in nazi Germany, a good German and a good Jew, an anti-Zionist who, after the promulgation of the Nürnberg Decrees, had been forbidden to practise his profession and had subsequently committed suicide in order to escape arrest. That was one result of racial legislation. Had Professor Ehrlich been alive today he would undoubtedly have been distressed at the anti-Arab meas-

ures adopted by the Zionists in Palestine. Moses had said, "An eye for an eye and a tooth for a tooth". But Ben-Gurion now said "Fifty eyes for an eye and fifty teeth for a tooth". In his last speech Ben-Gurion had justified the atrocious attack of Israel soldiers on Jordan villages, when some seventy innocent Arabs had been killed, on the grounds that a few days earlier three Israelis had been killed by Arab infiltrators.

16. The absurdity of the situation in South Africa might be illustrated by imagining a session of the General Assembly held at Johannesburg, with the consequent segregation of delegates according to the colour of their skins. Even members of the same delegation would be likely to be separated into whites and non-whites, seated at different tables in the dining-cars of trains, and prevented from attending the same social functions. These special arrangements, required by South African law, would doubtless prove most embarrassing to the representative of South Africa himself, and he (Mr. Shabander) would be glad to hear him deny that such was the true situation. He had had a personal experience of that kind even before the promulgation of the *apartheid* laws.

17. The joint draft resolution before the Committee was hardly likely to have any more practical effect than the earlier resolutions on the subject, but it at least gave expression to the Assembly's continuing interest in it. While, therefore, his delegation would welcome a conference between the three nations concerned, it would vote for the joint draft resolution, in case the conference did not take place.

18. Mr. TOV (Israel), speaking on a point of order, regretted that the Iraqi representative should have seen fit to include in his statement certain quite irrelevant remarks. The Iraqi representative's attribution to Professor Ehrlich of sentiments quite alien to that distinguished physician was most deplorable, as was his mention, in that connexion, of the first great legislator in history, Moses, who, with the exodus of the Jewish people from Egypt, had written the first page in the charters of freedom of all nations, and his attribution to Mr. Ben-Gurion of entirely uncharacteristic words and feelings. There was no racial discrimination in Israel. And it was most regrettable that an attempt should thus have been made to anticipate a debate which was not relevant to the present discussion.

19. Mr. SHABANDER (Iraq) replied that the Israel representative had misunderstood him. If he had referred to Professor Ehrlich as an anti-Zionist it was because he knew, from his personal acquaintance with the professor, that he disdained nationalism as a petty sentiment. As for that great prophet, Moses, if the true mosaic Law were followed today, human difficulties would disappear; unfortunately, modern Zionists were different from Moses, as was proved by Ben-Gurion's statement that the killing by the Jordanians of three Jews justified the murder of seventy Arabs.

20. Mr. TOV (Israel) said that if a debate had been opened on a statement by Mr. Ben-Gurion he was prepared to take part in it. He had not failed to understand the purport of the Iraqi representative's observations, but wished first to know whether the discussion was limited to the item on the agenda or whether the Committee was embarking upon a separate debate on another subject.

21. The CHAIRMAN replied that the subject of the present debate bore on the question of racial discrimination, and the Iraqi representative had explained that his references to Professor Ehrlich and Mr. Ben-Gurion had been made in that connexion.

The meeting rose at 11.45 a.m.

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