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THE REPORT OF THE SUB-COMMITTEE ON THE SPANISH QUESTION
APPOINTED BY THE SECURITY COUNCIL ON 29 APRIL 1946

The following is the report of the Sub-Committee appointed by the Security Council and consisting of the Representatives of:

Australia
Brazil
China
France
Poland

1. The report is agreed to by all members of the Sub-Committee, subject to two reservations, which appear at the end of the report. The report is divided into the following parts:

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I. INTRODUCTION

2. The Sub-Committee's examination of the facts of the case has been based mainly upon documents received from Members of the United Nations in response to a request to Members of the United Nations to supply all relevant information and also in response to inquiries on specific questions. A public announcement was made that the Committee would welcome information from any sources and it was in response to this general invitation that an extensive submission was also made by the Spanish Republican Government. The Sub-Committee approached its task with an earnest endeavour, first, to ascertain the relevant facts and then to apply the laws of the Charter to the facts as ascertained.

3. There can be no question that the situation in Spain is of international concern. That fact is sufficiently evidenced by the resolution of the first General Assembly in London, the resolution of the Security Council and the joint declaration of the United States, United Kingdom and France dated 4 March 1946.

4. It is also plain that the facts established by the evidence before the Committee are by no means of essentially local or domestic concern to Spain. What is imputed to the Franco regime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco regime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty.

5. The facts ascertained by the Committee cover an extremely wide field. They are set out in a separate document, to be forwarded to the Security Council as a supplementary memorandum. On the closing day of the Sub-Committee's work, a great number of additional papers from German archives and

having a possible relationship to the Spanish question were received from the United States Government. The Sub-Committee has given general consideration to this evidence. The detailed examination of the papers is proceeding rapidly, and if any additional matter relevant to the Sub-Committee's work is disclosed, it will be made the subject of a special supplementary report to the Security Council. All the facts before the Sub-Committee were sought for and furnished under the following nine headings:

- (a) The origin, nature, structure and general conduct of the Franco regime, the extent to which the institutions and policies of this regime are compatible with the principles of the Charter of the United Nations, and the extent to which they could obstruct the completion of the United Nations' security system.
- (b) The attitude of the Franco regime, during the recent war, to the Axis powers and the Allied powers.
- (c) The extent to which the Franco regime continues to harbor German assets, enterprises, and personnel, Nazi agents, organizations and war criminals and to tolerate their contact with Nazi and Fascist organizations outside of Spain.
- (d) The numerical strength of the armed forces of the Franco regime, including police and security forces, in relation to the population and resources of Spain; the strategic aims and other activities and purposes of these forces.
- (e) Production of uranium and war materials; military, naval and aeronautic installations; research on methods of war and mass destruction; atomic research; fortifications erected by the Franco regime and the strategic disposition of his armed forces; and other preparations for war by the Franco regime.

- (f) Persecution of Republicans and other political opponents, execution, imprisonment and police supervision of large numbers of the Spanish people.
- (g) Detention by the Franco regime of nationals of other countries.
- (h) Pro-Fascist activity of the Falange Party and other Franco organizations outside of Spain.
- (i) The reactions which have already resulted, in the relations between Spain and other countries, from the existence and policies of the Franco regime.

II THE RELEVANT FACTS

6. On the material placed before it, the Sub-Committee has come to the following conclusions:

- (a) In origin, nature, structure and general conduct, the Franco regime is a Fascist regime patterned on and established largely as a result of aid received from Hitler's Nazi Germany and Mussolini's Fascist Italy.
- (b) During the long struggle of the United Nations against Hitler and Mussolini, Franco, despite continued Allied protest, gave very substantial aid to the enemy powers. First, for example, from 1941 to 1945 the Blue Infantry Division, the Spanish Legion of Volunteers and the Salvadore Air Squadron fought against Soviet Russia on the Eastern front. Second, in the summer of 1940 Spain seized Tangier in breach of international statute and as a result of Spain maintaining a large army in Spanish Morocco large numbers of Allied troops were immobilized in North Africa.
- (c) Incontrovertible documentary evidence establishes that Franco was a guilty party with Hitler and Mussolini in the conspiracy to wage war against those countries which eventually in the course of the world

war became banded together as the United Nations. It was part of the conspiracy that Franco's full belligerency should be postponed until a time to be mutually agreed upon.

In a message to Mussolini on 16 August 1940, Franco wrote:

"Since the beginning of the present conflict, it has been our intention to make the greatest efforts in our preparation in order to enter the war at a favourable opportunity....

"Spain in addition to the contribution which she made to the establishment of the New Order ... offers another in preparing herself to take her place in the struggle against the common enemies ...

"I at the same time assure you of our unconditional support for your expansion and your future." (Document 2 in "The Spanish Government and the Axis: Documents", United States Department of State Publication 2483).

In a message to Hitler on 22 September 1940, Franco wrote:

"I am likewise of the opinion that the first act in our attack must consist in the occupation of Gibraltar ...

"For our part we have been preparing the operation in secret for a long time ...

"I reply with the assurance of my unchangeable and sincere adherence to you personally, to the German people, and to the cause for which you fight. I hope, in defense of this cause, to be able to renew the old bonds of comradeship between our armies ..." (1810 Document 5)

In a further message to Hitler on 26 February 1941, Franco wrote:

"...I stand ready at your side, entirely and decidedly at your disposal, united in a common historical destiny ..." (1810 Document 13).

(e) Correspondence exchanged between Franco and Hitler and Mussolini showed that they considered the war did not commence in 1939 but at the time of the outbreak of the Franco revolution in Spain and that the aid given by Mussolini and Hitler in Spain was part of the general plan of Fascist aggression against the democratic powers

(f) The correspondence between Hitler, Franco and Mussolini, together with other captured German documents, constitutes evidence against Franco of the same kind as has been submitted at the Nuremberg trials of war criminals to substantiate the charges of "crimes against peace, namely, planning, preparation, initiation, or waging of a war of aggression or war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." A primary objective of the conspiracy for Franco was territorial aggression, for example, a memorandum by the German Ambassador in Madrid dated 8 August 1940 and headed "Operation: Gibraltar" cites as one of the conditions laid down by the Spanish Government for entry into the war "Fulfillment of a set of national territorial demands, Gibraltar, French Morocco, that part of Algeria colonized and predominantly inhabited by Spaniards, (Oran), and further the enlargement of Plo de Oro and of the colonies in the Gulf of Guinea."

(g) Since the war the Franco regime has failed, and in some cases refused to co-operate in removing the vestiges of Fascism and Nazism in Europe. Both the United States and the United Kingdom Governments have stated their dissatisfaction with the Spanish attitude regarding the expulsion of obnoxious Germans from Spanish territory and with the lack of co-operation in other matters. The Belgian Government has complained of the refusal of Franco to hand over the Belgian Quisling traitor Degrelle.

7. There is also extensive evidence, chiefly from underground sources but which is considered by the Sub-Committee to be authentic and credible even if not susceptible of proof in all its details, indicating that the Franco regime continues to practise those methods of persecution of political opponents and police supervision over its people which are characteristic of Fascist regimes and which are inconsistent with the principles of the United Nations concerning the respect for human rights and for the fundamental freedoms.

8. The Sub-Committee gave close attention to evidence regarding the military strength and plans of Franco Spain, the production of war materials in Spain and, in general, the preparations for war on the part of Franco Spain. Various estimates were obtained of the strength of the naval, military and air forces and of the para-military organizations in the country and regarding the building of fortifications. The number of men under arms is far larger than might be expected in any peace-loving and non-aggressive country. Further the activities on the French frontier seemed to indicate the possibility of expectation of conflict by Franco Spain. However, it must be remembered that it is the very essence of military dictatorships to maintain large armies for the purpose of suppressing internal opposition.

9. The Sub-Committee examined the circumstances of the recent closing of the Franco-Spanish-frontier. While there is no clear evidence that the closing of the frontier was the result of any immediate threat of military action as between France and Spain, it is plain that a state of tension was thereby brought into existence and international friction accentuated. In reply to a question addressed to it by the Secretary-General, at the request of the Sub-Committee, the French Government furnished the following information in relation to the closing of the frontier:

"The decision of the French Government to close the Franco-Spanish frontier was taken following hostilities in Europe, in the relations of France and the

Franco Government, the maintenance of which, after the collapse of the totalitarian regime, appears to be a challenge to the victorious democracies.

The sentiments of justified mistrust which the methods and political tendencies of the dictatorial Spanish regime evoked in French public opinion were still more accentuated at the end of 1945 by the revelations concerning Franco's collusion with the Axis powers. In a note of 12 December 1945 addressed to London and Washington the French Government suggested that the British and American Governments should study the most appropriate measures to hasten the end of the present regime in Spain, which had been implicitly condemned by the Allies at Potsdam on 2 August 1945. For this purpose, France suggested a joint rupture of relations with Franco, being of the opinion that the democratic nations should not continue to give him the support which the maintenance of diplomatic and commercial relations actually gave him. It was in the same spirit that on 17 January 1946 the National Constituent Assembly invited the Provisional Government of the Republic, by a motion adopted with an imposing majority, to prepare to break off relations with the Spanish Government. While the French diplomatic action did not have the reception which might have been expected, the Franco authorities accentuated the repressive measures against the Republicans inside Spain. They caused one of them, Cristino Garcia, to be executed, a man in whose fate French public opinion took a very great interest on account of the active part which he had played in France during the battles for the liberation.

Coming after other repressive measures which had given rise to indignation, this act was the occasion for the Constituent Assembly, on 24 January 1946, to renew the motion which it has previously voted. It was in these circumstances that the Government of the Republic decided on 26 February, pending the adoption of concerted measures with the allies to close the frontier with effect as from 1 March 1946."

10. Such evidence as was available regarding the training and equipment of the Spanish army and the existing state of its armaments would not justify a finding that Spain was at the present time preparing for an act of aggression.

11. Nevertheless, having regard to the proved conspiracies of Franco with Hitler and Mussolini, the maintenance in Spain of large forces, and the other evidence before us, it is plain that Franco Spain might again become a ready instrument of aggressive warfare. The fact that there are two rival Spanish Governments in existence is in itself a potential danger to the peace inasmuch as there is always the possibility of civil strife and the possibility of intervention by other countries. The strategic situation and resources of Spain, coupled with the declared unfitness of Franco Spain for membership in the United Nations, means that at the present time the United Nations system of security will be dangerously incomplete.

III FRANCO SPAIN AND THE UNITED NATIONS

12. The existence of the Franco regime has already led to international action of great significance. At the United Nations Conference on International Organization at San Francisco, a resolution was agreed to unanimously to the effect that while the Franco regime remained in power Spain could not be admitted to the United Nations, and the debate which preceded the adoption of this resolution makes it clear that the nations there assembled were largely influenced by the war-time record of the Franco regime and by its Fascist policies and methods. The San Francisco decision was followed by the Potsdam Declaration of 2 August 1945, and by the general resolution agreed to by the first General Assembly of the United Nations in London on 13 February 1946. Furthermore, three of the Members of the United Nations - France, the United Kingdom and the United States of America - who are also permanent members of the Security Council, made a declaration on 4 March 1946, that so

long as General Franco continued in control of Spain the Spanish people could not anticipate full and cordial association with those nations of the world which had by common effort brought defeat to German Nazism and Italian Fascism, and they expressed the hope for the peaceful withdrawal of Franco, the abolition of the Falange and the establishment of an interim or caretaking government under which the Spanish people might have an opportunity freely to determine the type of government they wished to have and to choose their leaders. The resolution of the Security Council agreed to on 29 April referred to the "unanimous moral condemnation of the Franco regime in the Security Council."

13. Certain Members of the United Nations, acting individually, have broken off diplomatic relations with the Franco regime or have not entered into relations with it since its accession to power. At the present time 18 Members of the United Nations have no diplomatic relations with the Franco Government, 18 members have diplomatic relations of one kind or another. Seven nations have recognized the Spanish Republican Government. The Legislatures of seven other Members of the United Nations have requested their Governments to sever diplomatic relations with the Franco Government.

14. It is also to be noted that independent action has been taken by different nations at different times against the Franco regime.

On several occasions certain of the United Nations protested to the Franco Government against executions of political opponents. On 4 March 1946, France closed the French-Spanish frontier in the circumstances already referred to. On 11 April 1946, Poland brought the situation in Spain to the attention of the Security Council and the Polish request that the Council recommend severance of diplomatic relations with the Franco regime was supported by three other members of the Council, namely France, Mexico and the U.S.S.R.

15. The facts set out in Paragraphs 12 to 14 inclusive constitute additional evidence showing that the activities of the Franco regime have been and still are a source of international friction.

IV THE JURISDICTION OF THE SECURITY COUNCIL AND ITS POWER TO TAKE ACTION

UNDER CHAPTER VII OF THE CHARTER

16. The first crucial point to be considered is whether the situation in Spain is of such a kind as to justify direct executive action by the Security Council itself under Chapter VII which deals with various types of enforcement action which Members are obligated to take at the direction of the Security Council.

17. The originating complaint to the Security Council by Poland was aimed at placing the Spanish question on the agenda of the Council and Articles 34 and 35 alone were mentioned. But the resolution subsequently placed before the Security Council by Poland suggested action based upon the enforcement powers conferred upon the Security Council under Articles 39 and 41 of the Charter. Both these Articles are in Chapter VII.

18. The draft Polish resolution before the Security Council asserted that the existence and activities of the Franco regime "have led to international friction and endanger international peace and security". But these are not the conditions which must be satisfied before the Security Council has jurisdiction under Articles 39 and 41 to decide to call Members of the United Nations to apply the enforcement measures set out in Articles 41 and 42. Before direct action under Article 41 or 42 can be ordered, the Charter requires that the Security Council must determine under Article 39 the existence of a threat to the peace or a breach of the peace, or an act of aggression.

19. In the first place the question is whether the evidence justifies a positive and affirmative finding under Article 39.

20. The juridical meaning of Article 39 is that the Security Council has to measure the situation as at the moment of the proposed action on its part, it being the clear intention of the Charter that the Security Council should only direct enforcement measures, which include the actual waging of war, provided it is affirmatively satisfied that a threat to the peace, or a breach of the peace, or an act of aggression has actually come into existence.

21. A very sharp instrument has been entrusted to the Security Council by the United Nations under Chapter VII of the Charter and the Security Council must be careful that this instrument is not blunted nor used in any way which would strain the intentions of the Charter or which would not be applicable in all similar cases.

22. In the opinion of the Sub-Committee the Security Council cannot on the present evidence, make the determination required by Article 39. No breach of the peace has yet occurred. No act of aggression has been proved. No threat to the peace has been established. Therefore, none of the series of enforcement measures set out in Articles 41 and 42 can at the present time be directed by the Security Council.

V. OTHER MEASURES AVAILABLE TO THE UNITED NATIONS

23. Nevertheless, in the opinion of the Sub-Committee the matters brought before the Security Council in relation to Franco Spain are of so serious a nature that the Security Council, in discharging its primary responsibility for the maintenance of international peace and security, should not allow them to pass from its notice simply because it is unable to take the direct enforcement measures proposed in the draft Polish resolution.

24. Chapter VI of the Charter empowers the Security Council to examine "any situation which might lead to international friction" in order to determine whether the continuation of the situation is "likely to endanger the maintenance of international peace and security." In the opinion of the Sub-Committee, the Spanish situation is one which has already led to international friction. The investigation has convinced the Sub-Committee not only that international friction has occurred but that it is almost bound to recur.

25. In this connection the declaration on Spain by France, the United Kingdom and the United States of America, on 4 March 1946, is of great importance. That declaration says explicitly:

(a) So long as Franco continues in control of Spain, the Spanish

people cannot anticipate full and cordial association with those nations of the world which have, by common effort, brought defeat, to German Nazism and Italian Fascism

(b) The present regime has taken repressive measures against the orderly efforts of the Spanish people to organize and give expression to their political aspirations, and

(c) there should be a peaceful withdrawal of Franco, the abolition of the Falange and the establishment of an interim or care-taking government under which the Spanish people may have an opportunity freely to determine the type of government they wish to have and to choose their leaders.

26. In the declaration of 4 March those three Governments say that so long as Franco continues in control the Spanish people cannot anticipate full and cordial association with the United Nations. When they express a hope that Spain will not again be subject to the bitterness of civil strife, when they foreshadow the withdrawal of Franco and the abolition of the Falange and when they suggest that an interim democratic government will receive the recognition of all freedom-loving peoples, they are indicating the possibility of a new policy of the United Nations in relation to Spain which, by implication, condemns the present regime as a potential danger to the maintenance by the United Nations of international peace and security.

27. The Sub-Committee finds that the present situation in Spain, though not an existing threat within the meaning of Article 39, is a situation in continuance of which is in fact likely to endanger the maintenance of international peace and security. The situation in Spain thus falls to be dealt with by the Security Council under Chapter VI of the Charter, which covers measures of peaceful settlement and adjustment.

28. The Security Council is empowered under Article 36 to recommend appropriate procedures or methods of adjustment of such a situation. It is not vested with executive authority, as in the case of Chapter VII, but it is under the duty of devising methods of adjustment adequate to meet the given situation.

29. Moreover, while the Security Council exercises a primary duty in regard to the maintenance of international peace and security, the General Assembly is also vested by the Charter with power to deal with such situations. The General Assembly has power under Article 14 to make recommendations as to the pacific adjustment of any situation and it is only when the Security Council is actually handling a situation itself that the General Assembly cannot exercise this power. Furthermore, the General Assembly's powers of recommendation under Article 10 cover all matters within the scope of the Charter, including the purposes of the Charter set out in Article 1 (2), which is to take appropriate measures to strengthen universal peace.

VI CONCLUSIONS AND RECOMMENDATIONS TO THE SECURITY COUNCIL

30. The conclusions to which the Sub-Committee has come are as follows:

(a) Although the activities of the Franco regime do not at present constitute an existing threat to the peace within the meaning of Article 3 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42, nevertheless such activities do constitute a situation which is a potential menace to international peace and security and which therefore is a situation "likely to endanger the maintenance of international peace and security" within the meaning of Article 34 of the Charter.

(b) The Security Council is therefore empowered by Article 36 (1) to recommend appropriate procedures or methods of adjustment in order to improve the situation mentioned in (a) above.

31. The final question is what action should be recommended by the Sub-Committee to the Security Council. After considering carefully what would be effective and appropriate measures to meet the particular case, and having regard to the important powers of the General Assembly under Article 10 of the Charter, the Sub-Committee recommends as follows:

(a) The endorsement by the Security Council of the principles contained in the declaration by the Governments of the United Kingdom, the United States and France, dated 4 March, 1946.

(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that unless the Franco regime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations.

(c) The taking of appropriate steps by the Secretary-General to communicate these recommendations to all Members of the United Nations and all others concerned.

32. In the event of the General Assembly being satisfied that all the conditions set out in the declaration of 4 March, 1946, have been complied with including the withdrawal of the Franco regime, political amnesty, return of exiled Spaniards, freedom of political assembly and association and free public elections, the Sub-Committee suggests that it would be appropriate for the Organization to consider favourably an application by a freely-elected Spanish Government for Membership in the United Nations.

RESERVATIONS

Reservation No. 1 (Brazil)

The Brazilian Representative reserved his position, as a matter of principle regarding the recommendation contained in item (b) paragraph 31 of this report.

Reservation No. 2 (Poland)

The Polish representative believes that paragraphs 20 - 23 of the Sub-Committee's report contain implicitly a legal doctrine concerning the powers and duties of the Security Council under Article 39 of the Charter. This doctrine is reflected in the conclusions reached in paragraphs 27 and 30 (a) of the report. While accepting the analysis of facts and the recommendations of the Sub-Committee he reserves his opinion as to the legal doctrine mentioned.

The functions of the Security Council are preventive as well as repressive. The Security Council is free within the purposes and principles of the Organization to determine whether a situation is a threat to the peace in the sense of Article 39. The Charter does not demand that such a situation, in order to be recognized as a threat to the peace, be an immediate danger of a breach of peace or act of aggression within the next few days, weeks or even months. Potential as well as imminent dangers can be construed as a threat to the peace in the sense of Article 39. To affirm otherwise would mean that no actions by the Security Council are possible in situations like that of Mussolini before the imminent invasion of Abyssinia or that of Hitler before the first bombs were dropped on Polish cities. Unless threats to the peace are taken care of by the Security Council at an early stage while they still are potential and easy to remove, the United Nations may find themselves in face of situations beyond their power to control.

The enumeration in Article 41 of steps such as interruption of postal, telegraphic and radio communication and the severance of diplomatic relations indicates clearly that potential threats to the peace are also covered by

Article 39. If only imminent threats to the peace were envisaged in Article 39, measures short of economic and military sanctions would be meaningless.

For the reasons indicated, the Polish representative cannot agree with the statement that the activities of the Franco regime do not represent a threat to the peace within the meaning of Article 39 of the Charter and that The Security Council has no jurisdiction to direct, in this case, severance of diplomatic relations. While he supports the recommendations of the Sub-Committee he does so without prejudice to the rights of the Security Council.

H. V. EVATT
(Representative of Australia)
Chairman of the Sub-Committee

