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Chairman: Mr. Adnan M. PACHACHI (Iraq).

AGENDA ITEM 38

Study of principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter of the United Nations: report of the Special Committee established under General Assembly resolution 1467 (XIV) (A/4526)

GENERAL DEBATE

1. Mr. JHA (India), introducing the report of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter (A/4526), expressed the hope that the report would assist the Fourth Committee in the formulation and enumeration of the principles which should serve as a universal guide to Members in the discharge of their obligations under Chapter XI of the Charter. The conclusions in the report were related as closely as possible to the terms of reference of the Special Committee. The heart of the report was section V, part B, which enumerated twelve principles on the basis of which the General Assembly could appraise the circumstances in which information in respect of a Non-Self-Governing Territory should be transmitted under Article 73 e of the Charter.

2. All the members of the Committee, which was composed of an equal number of administering and non-administering Powers, had made sincere efforts to reach agreement and had shown mutual understanding and a readiness to compromise where that was possible without sacrificing essential principles. They had endeavoured to reach unanimous conclusions, in the belief that any conclusions on which there was a division of opinion would not be of much assistance to the Assembly.

3. No better example of the harmony that had prevailed in the Committee could be found than that reflected in the formulation of the principles, for while both the administering and the non-administering members had been tempted to insist on their respective points of view on particular aspects of the principles, they had realized that that would have made agreement

impossible and would have produced two sets of conflicting principles. They had therefore made every effort to reach unanimity. Where reservations had been made, they were recorded in paragraphs 13, 14 and 15 of the report. Any points which had arisen during the Committee's deliberations but were not explicitly covered in the report could be found in the summary records of the Committee (A/AC.100/SR.1-14).

4. The Special Committee had decided to confine itself to the enumeration of universal principles without reference to any particular Non-Self-Governing Territories, although individual Territories had occasionally been cited to illustrate certain points. The entire discussion had been held in the context of the present-day situation and of the problems of the Non-Self-Governing Territories as they had been studied in recent years in the Fourth Committee and the General Assembly. Not only had the Committee's work been carried out against the background of the no longer controversial ideal of a world in which no people could dominate another, but it had also taken account of such practical aspects as the different sizes, geographical situations and so forth of the Non-Self-Governing Territories, the development and experiences of the last few years and the various studies that had already been made on the subject.

5. The Committee had taken fully into account the views of Member States submitted in response to General Assembly resolution 1467 (XIV) which were set out in document A/AC.100/1 and Add.1 and were submitted to the Fourth Committee together with the report. It had also taken into account the factors for determining whether or not a Non-Self-Governing Territory had attained a full measure of self-government, as laid down in General Assembly resolution 742 (VIII). It had been considerably assisted by the documentation prepared by the Secretariat, especially the reports in documents A/AC.100/2 and Add.1 and 2.

6. In presenting its report, the Committee felt that it had formulated principles on the basis of which the General Assembly would be able to determine in each specific case whether or not an obligation to transmit information existed under Article 73 e of the Charter. If, as the Committee hoped, the Fourth Committee and the General Assembly could unanimously adopt a set of principles, it would be possible to apply them effectively to individual cases. The adoption of the twelve principles proposed would remove any uncertainty with regard to the existence of an obligation to transmit information or the circumstances in which such an obligation existed and would provide a legal and constitutional basis for any action which the General Assembly might take in the matter.

7. Mr. ALWAN (Iraq) proposed that the full text of the Indian representative's statement should be distributed as a document.

It was so decided.^{1/}

8. Mr. CUEVAS CANCINO (Mexico) said that the interpretation of Chapter XI of the Charter, which had imposed certain obligations on the Powers administering Territories other than their own, had given rise to much heated controversy in the General Assembly. Many attempts had been made to clarify the meaning and scope of that Chapter; and even greater efforts had been made by the Fourth Committee to determine when such obligations began and ended. A firm direction had been given to those efforts by General Assembly resolution 1467 (XIV), under which the Special Committee had been established.

9. His delegation had participated with enthusiasm in the work of the Committee, for the Mexican Government had always considered that the United Nations must concern itself with the future of the Non-Self-Governing Territories. In view of the fact that the Dumbarton Oaks Proposals had said nothing on that point, that the Mexican Government had felt that the work begun by the League of Nations should be continued and that the peoples of the Non-Self-Governing Territories were asking for self-determination, Mexico had firmly maintained that the international community should supervise the development of those peoples which were still not free to conduct their own affairs and had affirmed that the international community itself should decide which Territories should be placed under its protection.

10. It would be a mistake to approach the item under discussion as if it were a question of adopting something entirely new. What the Committee was trying to do was to give substance to the doubts and hesitations which had accompanied the colonial movement. Western civilization had always presented two aspects: the aggressive spirit which had given rise to expansionist colonialism, under which so many nations had suffered; and the constructive spirit, which had always tried to oppose that movement, with its false emphasis on material aims. Thus at the present day, rising in opposition to the obsolescent colonial system, were those who defended the primacy of world interests over the private interests of any one Power.

11. From the very outset there had been great European intellectuals who had opposed the colonial system and had thought that there should be restrictions on the exercise of force against weak foreign nations. The same spirit had led Europe to reject slavery. Just as colonialism and its abuses had come from Europe, so had Europe also provided the antidote to colonialism: the idea of an international community, human rights, the primacy of general interests over the private interests of any one State.

12. The United Nations was therefore simply following a trend which had been in existence for centuries. The United Nations had been based upon ideas which Europe itself had conceived to eliminate the grave defects implicit in its expansionist surge. It was thus continuing a task which had begun with colonialism itself and its success would be the happy culmination of a process which crystallized the highest spiritual aspirations of mankind.

13. It had been the task of the Special Committee to study colonial problems as they had existed since the

founding of the United Nations. That idea had found expression in the first of the principles it had adopted.

14. The ideas that had prevailed at the San Francisco Conference had changed in the course of fifteen years of colonial evolution. It had been said that the Special Committee should not interpret the Charter; yet he wondered whether that was not exactly what the Assembly or any other organ of the United Nations did with every action it took. The United Nations would be acting wrongly if, for fear of exceeding its powers, it were to abandon one of the primary goals sought by the Charter: the elimination of the colonial system throughout the world.

15. International development was observable in all fields, but in none more than in that of colonialism. What had been scarcely aspirations in 1945 were now accomplished facts. The reason was that other equally productive ideas had come to fulfilment, such as the concept of the sacred trust. That idea could be interpreted as the desire of the administering Powers to form the Non-Self-Governing Territories in their own image. Such an interpretation was not, however, acceptable in the present era, which admitted the co-existence of various civilizations from whose development along parallel lines a universal civilization would emerge. The sacred trust could not be interpreted as an imposition of Western values; on the contrary, it embodied the implicit undertaking to safeguard the culture of the non-self-governing peoples. His delegation considered it essential that the culture of each of those peoples should be preserved, as a necessary basis for their future development, without which they would have great difficulty in establishing themselves in a developing world. Of equal importance were their basic principles of justice and political organization. The General Assembly would do well to bear in mind the need for each of those peoples to reach self-determination according to its own standards.

16. Many colonial ideas were destructive, not the least being the imposition of alien juridical rules. Law was a social product and its indiscriminate application to national groups of different mental and political backgrounds could be extremely harmful. The problems of the non-self-governing peoples were very different from those of the administering Powers. The United Nations should assure them that they would attain independence according to their own legal concepts.

17. The Special Committee of Six had repeatedly stressed cultural distinctness. Under the Charter, all civilizations were of equal value and none was supreme; in consequence, the new nations found that the world was prepared to welcome their contribution to law and politics.

18. For centuries, statesmen in metropolitan countries, and notably in Spain, had inveighed against colonialism as a system of government. The reasons advanced by them were echoed in the Charter, the aim of which was to put an end to so outmoded and harmful a system. In so doing, it was guided by two main precepts: the first was to ensure that the just demands of the colonized peoples did not give rise to heavy loss of life, and the second to help those peoples to achieve independence in a way that would ensure their happiness. Unlike the Latin American countries in the days of their struggle for independence, the new nations could count on a favourable atmosphere.

^{1/} See A/C.4/450.

19. There was a close relationship between the reasoning which had led to General Assembly resolution 742 (VIII) and the principles which were now before the Committee. When it had approved those principles, the General Assembly would have established rules for dealing with two aspects of the same problem, namely, in what circumstances information regarding the Non-Self-Governing Territories should be transmitted to the United Nations, and in what circumstances the Administering Member was justified in ceasing to supply that information: in other words, the point at which a territory came under international supervision, and the point at which such supervision was no longer required. As the debates of the Committee had shown, the former question was of very great importance and principle IV made it clear that a prima facie obligation existed when a territory was geographically separate and ethnically and culturally distinct from the country administering it. With regard to principle V, he would lay particular emphasis on the reference to a territory being arbitrarily placed in a position or status of subordination.

20. Principles VI, VII, VIII and IX dealt with cases in which it could definitely be stated that there was no longer any reason for supervision. The basic idea was the same as that in General Assembly resolution 742 (VIII); where the principles differed was with regard to the actual historical moment when the transformation was complete.

21. His delegation considered the conclusions reached by the Special Committee of Six to be eminently constructive. It was only natural to assume that those who had drafted the Charter had considered the possibility of introducing changes in the quantity and scope of the information provided but they had certainly not contemplated its being reduced to nothing. What the Charter had sought to achieve was that the peoples of the Non-Self-Governing Territories should be assisted in every possible way to achieve independence; anything that prevented that objective from being attained was contrary to the spirit of the Charter. As paragraph 17 of the report pointed out, the Charter was the culmination of progressive evolution in international thinking; the fulfilment of its behests was an important factor in the preservation of international peace and security.

22. The all-important question was whether the provisions of Chapter XI of the Charter imposed an obligation on the Administering Members. His Government had never doubted that it did. It based its conviction on many reasons—the identity of views regarding the nature of the colonial problem which had informed both the Covenant of the League of Nations and the United Nations Charter; the fact that at San Francisco as much attention had been paid to the Non-Self-Governing Territories as to the Trust Territories; the fact that it was by a mere chance that the heading "Declaration" had been adopted for Chapter XI; the implication in the wording of that Chapter that an obligation existed; and the opinion of Professor Hans Kelsen, who had considered that the provisions of the Preamble and even more those of that Chapter entailed an obligation. If no clear statement regarding that question was to be found in document A/4526, it was because the positions of the delegations concerned had been established beforehand; nevertheless, marked progress had been made, thanks to the spirit of understanding shown by the members of the Special Committee of Six.

23. Principle III, which recognized that the obligations inherent in the possession of colonies were of an international nature, was of fundamental importance. Thus, the administration of colonies was no longer an instrument of policy of any Member State and the right of peoples to self-determination was no longer governed solely by the policies of the administering Power. The aim of international law was to ensure that justice would prevail among the nations and that each nation would receive its due, no matter what pressure was brought to bear. Principle III accordingly laid down that the fulfilment of the provisions of Article 73 e was an international obligation. If the international obligation to transmit information was accepted, then supervision by the General Assembly must be accepted also; were it not so, international rules could not be carried out.

24. His delegation considered that there was also a moral obligation and in that connexion he wished to emphasize the very importance which his delegation attached to Article 74 of the Charter. The principle of good neighbourliness, adopted by the American States as a legal tenet, had found expression both in the Preamble to the Charter and in Article 74; it was a modern adaptation of the old idea of the brotherhood of man. It meant that international relations were not to be conducted on the basis of selfish national interests. Every nation desiring to behave as a good neighbour was bound to take into consideration the well-being of the community and to ensure that its own interests were co-ordinated with those of the world in which it lived. The social meaning of private property had come to receive wide acceptance, and the same should be true of the universal meaning of State sovereignty. The implications of Article 74 were perfectly clear: no country was free to govern its colonies without taking into consideration the views of the international community. It was clear, therefore, that good neighbourliness was far more than a mere question of geographical proximity; it was founded on moral obligations which transcended geography. Moreover, it meant that the administering Powers must not only guide their colonies towards independence, but also take into account developments in the regions where those Territories were situated. All those aspects of the matter were well summarized in paragraph 19 of document A/4526 and his delegation was convinced that the introduction of that principle would have valuable results.

25. Although the principles drawn up by the Special Committee would probably fail to win the approval of those holding extremist views, they set out with sufficient clarity the conditions in which the obligations imposed under Article 73 e of the Charter were applicable. His delegation found them completely satisfactory and recommended them to the Fourth Committee.

26. Mr. DJERDJA (Yugoslavia) paid a tribute to the Special Committee of Six for the work it had done and the efforts it had made. His delegation was in agreement with virtually all its conclusions and observations. In particular it agreed with the opinion expressed in paragraph 18 of the Committee's report that "the Charter is a living document and the obligations under Chapter XI must be viewed in the light of the changing spirit of the times". The fact that that idea had been elaborated by a Committee in whose work representatives of administering Powers had taken

part endowed it in his opinion with a practical significance and a special value.

27. The obligation to transmit information under Article 73 of the Charter, and all the other obligations embodied in Chapter XI, were legal obligations equally with any others arising out of the Charter. They could not therefore be abrogated by unilateral action or arbitrary interpretation by any Member State. The obligation to transmit information applied to all Territories whose peoples had not yet attained a full measure of self-government and remained in force from the time the administering Power concerned was admitted to the United Nations until the attainment of full self-government by the Non-Self-Governing Territories. Nothing less than full and complete self-government could free the Administering Members from that obligation. A limited measure of self-government in certain functional fields mentioned in Article 73 e could not serve as a basis for the cessation of the transmission of information under that Article.

28. The General Assembly was competent to decide whether a territory had attained a full measure of self-government, or in other words whether it came within the purview of Chapter XI of the Charter. The competence of the General Assembly in that matter was clear from the relevant provisions of the Charter and had been confirmed by the General Assembly in numerous resolutions.

29. Nevertheless, the question of the establishment and determination of certain principles had no longer the same practical significance it had had in the past and had become to some extent academic. The situation had changed greatly since the time when the Charter had been adopted, and even since the fourteenth session of the General Assembly, when the Special Committee of Six had been established. The question of the liquidation of obsolete colonial relationships and of the granting of freedom and independence to all dependent peoples had become a question of the highest international significance, as was shown by the fact that at the present session attention was focused on colonial problems. The United Nations could not permit its decisions and actions to be overtaken by developments in the colonial and other fields; its decisions must keep abreast with the times and give concrete form to contemporary trends and aspirations. The enslaved peoples of Angola, Mozambique, so-called Portuguese Guinea and other territories, who were deprived of basic national rights and dignity, were confidently awaiting much more than a mere confirmation of principles from the decisions of the General Assembly.

30. His delegation, like many others, had never doubted that the territories under Portuguese and Spanish administration had always been and would remain colonies in the full sense of the word so long as they did not achieve complete independence. Those territories therefore came within the purview of Chapter XI of the Charter. The fact that Portugal had replaced the term "colonies" by "overseas provinces" did not alter their colonial status.

31. During the general debate on the question of Non-Self-Governing Territories his delegation had given some particulars concerning the situation in the Territories under Spanish and Portuguese control, as had other delegations, especially those from Africa. It would be useless for the administering Powers to attempt to refute the facts.

32. His delegation felt that the Fourth Committee should be concerned less with the determination of principles than with appropriate action leading to the early attainment of full independence by all Non-Self-Governing Territories and to the rapid elimination of colonial relationships in general.

33. The question of the Spanish and Portuguese colonies was a component part of the colonial problem and any decisions the General Assembly might take on that problem at the present session must apply to all dependent territories equally. He had in mind particularly the draft resolution relating to the participation of the Non-Self-Governing Territories in the work of the United Nations and the specialized agencies approved by the Committee at its 1022nd meeting. On the basis of that resolution his delegation expected qualified representatives of the indigenous populations of the Portuguese and Spanish possessions to participate in the work of United Nations organs until they had achieved full liberation.

34. His delegation was ready to support every action designed to ensure the early and full emancipation of all Non-Self-Governing Territories.

35. Mr. SIDI BABA (Morocco) said that he had little to add to what had been said by the representatives of India and Mexico. As was only natural in view of the parity composition of the Special Committee of Six, the report represented a compromise and had to a certain extent been drafted in less categorical terms than the delegations of the non-administering Members might have desired. The Special Committee of Six had left it to the Fourth Committee to enumerate the territories in respect of which the obligation to transmit information should be applied and to specify the colonialist Powers concerned. In the opinion of the delegation of Morocco all dependent territories without exception should be included. All the colonialist Powers should abide by the principles laid down in the report and should take account of recent developments. The General Assembly had decided to examine in plenary session the draft declaration on the grant of independence to colonial countries and peoples (A/4502 and Corr.1). Thus a great evolution had taken place since the report of the Special Committee had been drafted.

36. He proposed that the statement just made by the representative of Mexico should be circulated as a Committee document.

37. Sir Andrew COHEN (United Kingdom) said that he would not make a long statement at the present stage but would like to make one or two general remarks.

38. The United Kingdom delegation had agreed to take part in the work of the Special Committee of Six because it had thought that Committee had a useful task to perform. None of those who had participated in the work of the Fourth Committee in past years could have failed to notice that, despite the close and friendly relations which existed between members, there had been a difference of view on the subject matter covered by the report of the Special Committee. Such differences were inevitable, since they arose from divergencies of national approach, but he felt that the degree of difference in the Committee was greater than it need have been. His delegation had always been convinced that, if a close study could be made of the principles which should guide Member States in the matter and if delegations could achieve greater understanding of each other's views, the differences could be greatly

narrowed. Before the Special Committee had begun its work he had thought that the chances of arriving at an agreed report were problematical. The Fourth Committee could congratulate itself on the fact that that Committee had been able, through the good faith, sympathy, mutual understanding, patience and hard work of its members, to produce an agreed report.

39. The United Kingdom delegation had felt impelled to enter certain reservations with regard to some parts of the report; but in other parts of the report, the language had not been entirely satisfactory to it and his delegation had not made reservations. As the representative of Morocco had observed, it had been difficult at times to reach complete agreement and both sides had had to make every effort to do so. The fact that agreement had been reached showed that where important matters which affected the interests and future of millions of people were concerned it was possible for the members of the Special Committee of Six or of any other United Nations body to arrive by negotiation and compromise at something which could be widely if not unanimously accepted. That was encouraging and he hoped that in other important matters affecting the subject under discussion it would be possible to proceed in the same way. The United Kingdom delegation was glad that the Special Committee had been able to agree on principles which, in the words of General Assembly resolution 1467 (XIV), "should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter". In his delegation's view those principles should be commended by the General Assembly to

Member States. They would have all the authority of a text agreed upon by such a widely representative Committee.

40. He supported the suggestion made by the representative of Morocco that the statement of the representative of Mexico should be circulated as an official document.

41. The CHAIRMAN said that if there were no objections the text of the statement made by the representative of Mexico would be circulated as a Committee document.

It was so decided.^{2/}

42. Miss BROOKS (Liberia) said that for the time being she would make no statement on the item before the Committee. She wished, however, to pay a tribute to Mr. Espinosa y Prieto, of Mexico, on whose initiative the draft resolution calling for the establishment of the Special Committee of Six had been submitted to the Fourth Committee at the fourteenth session. She thanked him, on behalf of the African States represented in the Committee, for his valiant defence of the interests of the dependent peoples.

43. Mr. CUEVAS CANCINO (Mexico) said that he would convey the remarks made by the representative of Liberia to Mr. Espinosa y Prieto.

The meeting rose at 12.20 p.m.

^{2/} See A/C.4/451.