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CONTENTS

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

In the absence of the Chairman, Mr. Ortiz de Rozas (Argentina), Vice-Chairman, took the Chair.

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, A/C.4/L.649/Rev.1, Rev.1/Corr.1 and Rev.1/Add.1) (continued)

CONSIDERATION OF DRAFT RESOLUTIONS (A/C.4/L.649/REV.1, REV.1/CORR.1 AND REV.1/ADD.1) (concluded)

1. The CHAIRMAN invited any delegations who wished to do so to explain their votes at the previous meeting on draft resolution A/C.4/L.649/Rev.1, Rev.1/Corr.1 and Rev.1/Add.1.

2. Miss BROOKS (Liberia), explaining her delegation's vote, recalled that in the debate on the Ukrainian amendments (A/C.4/L.651), her delegation had stated that it was in favour of the inclusion in the draft resolution of the list of territories under Spanish administration. Its abstention in the vote on the phrase "concerning the following Non-Self-Governing Territories" in the first Ukrainian amendment (A/C.4/L.651, para. 1), the rejection of which would, it had realized, result in the deletion of the list of the territories, had been prompted by the Spanish representative's statement to the effect that his Government would transmit to the Secretary-General the information called for in Chapter XI of the Charter. Her delegation felt that it should respect the good faith of a sovereign Member State, although it considered that Spain should have enumerated the territories concerning which it intended to transmit information. Her delegation reserved the right to revert to the question at the following session of the General Assembly, should Spain fail to carry out its promise.

3. Her delegation had voted against the Ukrainian amendment calling for the deletion of operative paragraph 4 of the draft resolution because it thought that the Secretary-General should take the necessary steps resulting from the statement by the Spanish representative, with a view to bringing the information before the Fourth Committee at its sixteenth session.

4. Mr. SOUZA-BRAGA (Brazil) explained that his delegation had voted against the draft resolution because it considered that the enumeration of territories in that resolution went beyond the principles approved by the Committee and created a dangerous precedent. His delegation had supported the draft resolution adopted at the 1045th meeting, to which the principles were annexed, even with the amendment presented by Tunisia and Togo, because it had felt that they were just and good. He hoped that the stand taken by his delegation would not be misinterpreted either by the young nations of Africa or by Portugal, with both of which his country had close ties of friendship.

5. Mr. KOSCZIUSKO-MORIZET (France) explained that his delegation had voted against the draft resolution adopted at the previous meeting because it had deemed the wording of that text to run counter to the principles enshrined in the Charter, which his country had always defended. Article 73 of the Charter referred to an acceptance, not to an obligation. It was clear from the proceedings at the San Francisco Conference and from the undeniable differences between the provisions of Chapter XI on the one hand and Chapters XII and XIII on the other that the Charter had not given the United Nations the right of supervision over the Non-Self-Governing Territories. The Charter did not enumerate the territories to which Article 73 might apply, or empower the General Assembly to draw up such a list. Nor were the Administering Members called upon to supply a list of such territories. As the Charter stood, the General Assembly was not entitled to decide whether a territory was or was not self-governing. The General Assembly had accordingly refrained from drawing up any lists and had merely taken into account the information voluntarily supplied by the Administering Members. France was entitled to recall the letter of the law, because it had complied with it. Respect for a rule that was common to all—however imperfect such a rule might appear—was the best guarantee that the aims of the United Nations would be attained.

6. Mr. LOOMES (Australia) said that his delegation had abstained in the vote on the draft resolution, in spite of being in general agreement with the principles formulated by the Special Committee of Six on the Transmission of Information under Article 73 e of the

Charter, because the draft resolution went far beyond the terms of General Assembly resolution 1467 (XIV), which provided that the principles in question should guide Members in determining whether or not an obligation existed to transmit the information called for in Article 73 e. His delegation had reservations concerning the General Assembly's competence to specify territories, as the draft resolution did. Moreover, it did not think that the United Nations could reasonably be expected to reach an accurate decision on which Portuguese territories should and which should not be included in the list, for there were a number of complex factors that could combine to make a decision unwise and even arbitrary.

7. Mrs. SKOTTSBERG-AHMAN (Sweden) said that, while her delegation had voted in favour of the draft resolution, it had reservations on one point. Although the draft resolution should be read against the background of the draft resolution adopted at the 1045th meeting, operative paragraph 3 of which provided that the principles should be applied in the light of the facts and circumstances of each particular case, it could not be said that the Committee had really looked into the facts and circumstances relating to each of the territories enumerated in operative paragraph 1 of the draft resolution adopted at the previous meeting. Her delegation had therefore abstained when the list of those territories had been put to the vote.

8. Mr. KENNEDY (Ireland) said that he would not explain the reasons for which his delegation had voted in favour of the draft resolution because many of its views coincided with those expressed by the Indian delegation at the 1048th meeting.

9. His delegation had voted against the Ukrainian amendments for three main reasons. Firstly, it had been uneasy about the inclusion of references to certain territories which were the subject of bilateral conversations between Spain and another Member State. Secondly, he had been surprised at the inclusion of the Canary Islands in the list of the Non-Self-Governing Territories: it was impossible to argue that the Canary Islands were culturally or ethnically distinct from the Spanish motherland; the Irish delegation, believing in the principles annexed to the draft resolution adopted at the 1045th meeting, wished them to be applied correctly. Thirdly, his delegation respected the solemnly declared promises of the Spanish Government. The adoption of the Ukrainian amendments would have been tantamount to repudiating the pledged word and good faith of that Government.

10. Sir Andrew COHEN (United Kingdom) said that his delegation adhered to its view that it was not for the General Assembly to express an opinion whether or not an obligation existed to transmit information in any particular case. In resolution 1467 (XIV) the General Assembly had expressed the opinion that it would be desirable for it to enumerate the principles which should guide Members in determining whether or not an obligation existed to transmit the information called for in Article 73 e of the Charter. His delegation had therefore abstained on the draft resolution adopted at the previous meeting because, had it voted either for or against, its vote might have been taken as an expression of opinion on the substance of the matter dealt with in the draft resolution.

11. His delegation was of the opinion that the language used in the latter part of the third preambular paragraph of the draft resolution was exaggerated and that its meaning was not clear. The words "a threat to international peace" should, in the United Nations, be used with extreme care and only in circumstances where they had a more precise meaning. His delegation questioned whether the use of those words was justified or necessary in the resolution and regretted that they had been included.

12. Mr. ACLY (United States of America) explained that his delegation had abstained in the vote on the draft resolution because it did not think that the General Assembly was entitled to single out particular countries to remind them of their obligations under Article 73 e of the Charter or that it was the function of the United Nations to determine which territories fell within the ambit of Article 73. There appeared to be a conflict between the spirit of General Assembly resolution 1467 (XIV) and any attempt on the part of the General Assembly to determine for itself whether or not an obligation to transmit information existed in a specific case. The decision in that respect should be made by the Administering Members in the light of their constitutional arrangements. Moreover, it was for the Administering Members to decide on the application of the principles annexed to the draft resolution adopted at the 1045th meeting. If the General Assembly called on one particular country to supply information on territories whose status was questioned, it was difficult to see why it should not call on other countries to do likewise.

13. The foregoing considerations did not prevent the United States from giving the broadest interpretation to Article 73 e. Thus it had reported on territories which had been incorporated parts of the United States and two of which had recently, of their own choice, become States of the Union.

14. Mr. MIYAZAKI (Japan) said that his delegation had hoped that the twelve principles elaborated by the Special Committee of Six would be adopted as they appeared in section V, part B, of that Committee's report (A/4526), but principle IX (b) having been amended, it had been obliged to abstain when that principle had been put to the vote at the 1045th meeting. In view of the far-reaching significance of the question, however, it had voted in favour of the draft resolution adopted at that meeting, as a whole. His delegation regretted the categorical rejection by the Portuguese representative of all the principles as not applicable to Portuguese territories and hoped that that would not be Portugal's final decision. At the same time, his delegation entertained doubts about the advisability of enforcing the implementation of the principles immediately after their approval by the Committee and felt that it would be more becoming if Portugal were allowed some time for study and reassessment of its stand.

15. His delegation had been unable to accept the enumeration of territories in operative paragraph 1 of the draft resolution adopted at the previous meeting and, after asking for a separate vote on that paragraph, it had abstained. In view of the importance of that paragraph in relation to the draft resolution, his delegation had likewise abstained on the draft resolution as a whole.

16. Mr. KIANG (China) recalled that his delegation had voted in favour of the third and fourth preambular paragraphs of the draft resolution and had abstained in the vote on the draft resolution as a whole. Apart

from its reservation with regard to the inclusion of Macau in the list of territories enumerated in the draft resolution, his delegation considered that the draft resolution should have been couched in general terms so as not to exclude the application of the twelve principles to other Non-Self-Governing Territories and peoples now hidden under enigmatic labels characteristic of neo-colonialism. His delegation appreciated the good faith with which the Spanish representative had met the views of the Committee, and associated itself with the Colombian representative's appeal to Portugal to do likewise.

Mr. Pachachi (Iraq) took the Chair.

17. U TIN MAUNG (Burma) regretted that in the course of the debate certain delegations had questioned the motives of the sponsors of the draft resolution in amending their original text (A/C.4/L.649). The purpose of amendments to a draft resolution was to improve the final text and it had been as a result of that democratic process that the final text of the draft resolution had been produced. The Ukrainian amendments (A/C.4/L.651), on the other hand, had created difficulties which the sponsors could not overcome without sacrificing the shape and substance of their text. The Committee had been dealing with the specific issue of the transmission of information under Article 73 e of the Charter and not with the wider issue of the elimination of colonialism, although the latter was uppermost in the thoughts of the sponsors. The purpose of the draft resolution was to urge the countries enumerated in it to transmit information under Chapter XI of the Charter.

18. As the Burmese delegation had hoped, and indeed anticipated, the Spanish Government had agreed to transmit information to the Secretary-General in accordance with the provisions of Chapter XI of the Charter. He hoped that that pledge would be fulfilled.

19. The Burmese delegation discriminated against nobody but it felt that its stand must be made clear on matters such as colonialism, which was obsolete in the context of the changing spirit of the times. In the light of those considerations its vote on the draft resolution would stand the test of history. His delegation had voted in favour of the draft resolution and against the Ukrainian amendments. It had voted against the deletion of the words "with satisfaction" in the fourth preambular paragraph of the draft resolution because it considered that the United Nations should express satisfaction when the representative of a Member State declared that his Government agreed to transmit information in accordance with the provisions of Chapter XI of the Charter. It had voted in favour of the amendment to the fourth preambular paragraph proposed by the Bulgarian delegation, which had cleared up certain doubts entertained by many delegations, including that of Burma.

20. His delegation could recall previous statements by the representative of Spain regarding the obligation to transmit information on Spain's overseas territories, but it was convinced that Spain was now prepared to co-operate more closely with the United Nations. The declaration made at the 1048th meeting was one that could not be retracted without serious consequences for Spain's relations with the rest of the world.

21. Mr. VANDERBORGHT (Belgium) said that his delegation had voted against the draft resolution, for reasons which had no political or colonial connotation but were of a purely legal character. Nowhere in the Charter was there any justification for such a recommendation; in the light of Article 73 it was an infringement of the prerogatives of Member States. The Belgian delegation had in the past expressed its views concerning the categories of territories on which information should be submitted under the terms of the Charter, but its attitude had been inspired by respect for the sovereign rights of States. It was for them and for them alone to decide whether or not to transmit to the Secretary-General the statistical and other information referred to in Article 73 e.

22. In the opinion of the Belgian delegation there were a number of territories concerning which information had never been transmitted but which should have been regarded as coming under the terms of Chapter XI. If, however, the General Assembly had assumed the right to enumerate those territories it would have overstepped its functions and undermined the contractual foundations on which the provisions of the Charter were based.

23. In view of those considerations his delegation had been unable to vote in favour of operative paragraph 1 or of the draft resolution as a whole. The position of the Belgian delegation could be summed up in a simple phrase: the whole Charter and nothing but the Charter.

24. Mr. ANSTENSEN (Canada) said that his delegation had supported a number of paragraphs in the draft resolution in its revised form. He had been particularly happy to vote in favour of the fourth preambular paragraph, which recalled with satisfaction the assurances given by the representative of Spain regarding transmission of information on Spanish overseas territories.

25. The draft resolution dealt with the transmission of information, applying to a specific case the principles approved in the draft resolution adopted at the 1045th meeting. Those principles could do no more than create a presumption that certain territories were not self-governing and therefore came within the scope of Chapter XI of the Charter. Accordingly, since no detailed information had been presented concerning the territories listed in the draft resolution, it would in his delegation's view have been more appropriate if no listing of territories had been attempted. Included in the list were territories on which the detailed knowledge required for decision was not available to the Committee. Furthermore, whatever view might be taken of the policies followed by a particular Government, the fact remained that no time had been allowed for that Government to adjust its attitude and actions should the Assembly's acceptance of the principles have impressed it with the need to do so. The resolution accepting the principles had to that extent been deprived of its full and proper effect.

26. His delegation had doubts regarding the implications of the third preambular paragraph. Presumably it had not been intended to characterize all colonial peoples as subjugated or to imply that self-determination was customarily denied by colonial Powers. Nor could it have been intended to imply that independence and self-determination were necessarily synonymous.

27. For those reasons the Canadian delegation had abstained in the vote on the draft resolution as a

whole. He regretted that the wording had been such as to make it impossible for his delegation to accept it unreservedly.

28. Mr. VITELLI (Italy) said that his delegation had abstained in the vote on the draft resolution. It had had doubts about the advisability of certain parts of the text, since the Committee had been confronted with an entirely new departure in a matter which it had had reason to believe had acquired the character of a well-established and agreed practice.

29. General Assembly resolutions, such as resolutions 66 (I), 146 (II), 218 (III), 334 (IV), for example, had all stressed that recommendations were not to be made with respect to any single territory and that the enumeration of territories should be made in accordance with the Administering Members. That practice had been maintained through the years and reaffirmed as recently as the previous year by resolution 1467 (XIV), which expressed the view "that it would be desirable for the General Assembly to enumerate the 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". Hence his delegation, while acknowledging the contribution made by the sponsors of the draft resolution towards an equitable solution of the problem, had been unable to support that text.

30. Mr. LANZA (Uruguay) said that, owing to special circumstances which his delegation greatly regretted, it had been unable to attend the 1048th meeting, at which the vote had been taken. If it had been present it would have voted in favour of the draft resolution, which it thought would strengthen the prestige of the United Nations. His delegation's vote would have been in accordance with the statement it had made during the course of the debate, to the effect that it hoped the resolution would be supported by all delegations, including even those representing countries which maintained reservations with regard to the legal aspect of the matter, but nevertheless upheld the principles of the Charter.

31. Mr. ORTIZ DE ROZAS (Argentina) said that at the 1046th meeting, his delegation had stated its reasons for voting in favour of the draft resolution. It had voted against the first Ukrainian amendment (A/C.4/L.651, para.1), proposing the addition, at the end of the fourth paragraph of the preamble, of a list of territories administered by Spain. That list included a territory over which Spain considered that it had sovereign rights and which was the subject of bilateral negotiations. The list also mentioned the Canary Islands, without any historical, geographical, legal, racial or other justification. In his delegation's opinion there could be no doubt whatever about Spanish sovereignty over the Canary Islands.

32. He paid a tribute to the representative of Portugal for the admirable manner in which he had defended his Government's position.

33. Mr. DORSINVILLE (Haiti) said that he had voted against the first part of the first Ukrainian amendment because in his view it was only natural to express satisfaction at the fact that the Government of Spain had decided to transmit information on its territories in accordance with Chapter XI of the Charter.

34. Had the list of Spanish territories been put to the vote, his delegation would have voted against the inclusion of the Canary Islands since it did not consider that they fell within the category of Non-Self-Governing Territories.

35. With regard to the Ukrainian amendment to operative paragraph 2 (A/C.4/L.657, para.3), although in principle the Haitian delegation could not but support the objective of independence, in the context of the draft resolution the amendment might be interpreted as disregarding principle VI, approved by the Committee at the 1045th meeting. The Haitian delegation felt free to make that point because its unvarying position on the question of the accession of dependent territories to independence was well known, and it had entered formal reservations with regard to principles VI (c), VIII and IX, all of which related to the integration of a Non-Self-Governing Territory with an independent State.

36. He had voted against the proposal to delete operative paragraph 4; the Secretary-General had an essential role to play in connexion with the transmission of information.

37. He had voted in favour of the draft resolution as a whole, though with somewhat mixed feelings: with satisfaction because of the new position taken by the Spanish Government, but with regret that it had not been possible for Portugal to adopt a similar attitude.

38. Mr. SKALLI (Morocco) said he would take the opportunity of repeating that Morocco considered the towns of Ceuta and Melilla and the territories of West Sahara and Ifni to be integral parts of its territory.

AGENDA ITEM 43

Question of South West Africa (A/4464)

QUESTION OF PROCEDURE RAISED BY THE REPRESENTATIVE OF THE UNION OF SOUTH AFRICA

39. Mr. LOUW (Union of South Africa) recalled that the discussion of the question of South West Africa had in past years covered a very wide field and every coinceivable aspect had been dealt with. The discussion at the current session would ordinarily have followed the same course as in previous years but for the fact that, since the inclusion of the item on the agenda of the fifteenth session of the General Assembly, there had been a development which substantially altered the situation. An application instituting contentious proceedings[1/] in the International Court of Justice had been filed against the Government of the Union of South Africa by the Governments of Ethiopia and Liberia. It was for that reason that he had returned to New York.

40. Perusal of the text of the application to the Court showed that if the Committee were to discuss the item the discussion would, in accordance with past practice, traverse the whole sphere covered by the application submitted to the Court by the Governments of Liberia and Ethiopia. He therefore raised the point of order that in those circumstances the substance of the contentious proceedings was sub judice and should not be discussed by the Committee.

41. According to the sub judice rule, a court should not be hindered in any way in the impartial exercise of its functions while a case was pending. In most

1/ I.C.J., South West Africa Case, Application instituting proceedings (1960, General List, No. 47).

legal systems any action or comment, whether by public bodies, in newspaper articles or in public speeches, which might tend to intimidate, embarrass, influence or impede a court in the administration of justice was regarded as contempt of court and was subject to heavy punishment.

42. In his own country, the sub judice rule was very strictly observed and it was applied in most other civilized countries. For example, it had been applied in several cases in the United States, one of them decided in the United States Court of Appeal only two years previously. The rule was also applied in United Kingdom judicial practice, on which the judicial practice of the United States and of the Commonwealth countries was largely based.

43. It might perhaps be argued that that principle, while recognized in the legal systems of individual countries, was not necessarily applicable in international law. In that connexion, he drew attention to Article 38, paragraph 1 c of the Statute of the International Court of Justice, which provided that the Court, in dealing with disputes in accordance with international law, should apply "the general principles of law recognized by civilized nations". The Permanent Court of International Justice in the case of the Electricity Company of Sofia and Bulgaria 2/ invoked "the principle universally accepted by international tribunals...to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step to be taken which might aggravate or extend the dispute". Mr. Manley O. Hudson, a Judge of the Permanent Court of International Justice, in his authoritative work The Permanent Court of International Justice, 1920–42 3/ referred to the same principle.

44. Another organ of the United Nations had observed the sub judice rule. During the discussion of the Anglo-Iranian Oil Company case in the Security Council, in October 1951, Sir Benegal Rau, later a Judge of the International Court of Justice, had said "It may not therefore be wise or proper for us to pronounce on this question while substantially the same question is sub judice before the International Court of Justice". 4/ At the 565th meeting of the Security Council, on 19 October 1951, 5/ the adjournment of the debate had been proposed until such time as the International Court of Justice had ruled on competence. Sir Benegal Rau had then pointed out that the basic question was whether the matter was sub judice. A proposal that the debate should be adjourned had been carried by eight votes to one, the USSR alone voting against the proposal. He suggested that that important precedent should be followed by the Fourth Committee.

45. Apart from the question whether the matter was sub judice, there was another aspect referred to by an authority on international law in The British Year-book of International Law (1958) 6/ and described there as undesirable, namely duality of jurisdiction. In the Ambatielos case of 1952, Judge Spiropoulos before the International Court of Justice had said that the tribunal which adjudicated on the issue before the Court must also adjudicate on the objection because a pronouncement on jurisdiction by one tribunal, while the merits fail to be heard subsequently by another, must risk prejudging, or at any rate affecting, the position of one or the other party. In his judgement on the preliminary objection in the same case, Judge Klaestad too had dealt with the undesirable aspects of dual jurisdiction.

46. An analogous principle was contained in the so-called "doctrine of litispendence" referred to in the case concerning certain German interests in Polish Upper Silesia which had come before the Permanent Court of International Justice. 7/ The effect of those pronouncements was that one Court should refuse to entertain a suit pending in another Court in the same State.

47. Those who denied that the sub judice rule applied also to a case pending before the International Court of Justice argued that, under Article 10 of the Charter, the General Assembly might discuss any question within the scope of the Charter. That argument was fallacious, and those who resorted to it forgot that Article 10 was subject to certain other provisions, for instance Article 12 of the Charter, which provided that, while the Security Council was exercising in respect of any dispute the functions assigned to it in the Charter, the General Assembly should not make any recommendations with regard to that dispute unless the Security Council so requested. It was obvious that the intention and general spirit of the Charter was that the same principle must be applied in respect of a matter dealt with by the International Court of Justice, which, as Article 7 of the Charter made clear, was a principle organ of the United Nations.

48. It was clear from the authorities which he had quoted and the arguments which he had advanced that, if the question of South West Africa was discussed at that stage by the Committee, its members would be expressing opinions—and even pronouncing, by way of a draft resolution—on a matter which was in the hands of the International Court of Justice; not only would they be transgressing the sub judice rule, but the discussions and any resolutions adopted could be construed as an attempt to usurp the functions of the Court.

49. By proceeding with the debate, the Committee would be creating a precedent which might be regretted by some of the Governments represented in it when they themselves might be involved in situations which might become the subject of proceedings before the International Court. For example, during the current session the Special Political Committee had been discussing the position in the Tyrol: if, after that matter had been placed on the agenda and just prior to its being discussed, one of the parties had decided to institute proceedings in the International Court, he felt sure that the other party would have objected strenuously to the discussion in the Special Political Committee and that that Committee would have discontinued it. There were similar situations—as, for instance, the situation between the United States and

2/ Electricity Company of Sofia and Bulgaria, Advisory Opinion of 5 December 1939: Permanent Court of International Justice, Series A/B, fascicule No. 79).

3/ New York, The Macmillan Company, 1943.

4/ See Official Records of the Security Council, Sixth Year, 561st meeting, para. 75.

5/ Ibid., 565th meeting.

6/ London, University Press, 1959, p. 39.

7/ Collection of Advisory Opinions, Permanent Court of International Justice, Series B, No. 6 (September, 1923).

Cuba—which could become the subject of discussion in the First or Special Political Committees and could later lead to action being taken in the International Court. Again, instances had arisen where neighbouring States had been accused of giving assistance to revolutionaries. Such happenings might lead to charges being made in the United Nations which in turn might result in proceedings being taken in the International Court.

50. He felt bound to warn Member States voting for the continuation of the discussion of the item, that they might find themselves the victims of a precedent which they themselves had helped to create. They would then be precluded from objecting if the General Assembly or any of its Committees were to continue the discussion of a matter in which they were the defendants before the International Court. They should therefore give careful consideration to so important a matter before committing their Governments for the future. So far as his delegation had been able to ascertain, that was the first occasion on which the sub judice rule had been raised either in the General Assembly or in any of its Committees; when the rule had been raised in the Security Council in connexion with the Anglo-Iranian dispute, it had been sustained by that body.

51. The South African delegation was convinced that it would not be proper for the Committee to proceed with the discussion of the item while the application was pending before the International Court and was thus sub judice. That had been the reason for his intervention on a point of order.

52. The CHAIRMAN pointed out that under rule 117 of the rules of procedure, two representatives might speak in favour of the motion and two against.

53. Mr. CAMARA Maurice (Guinea) said that the arguments put forward by the South African representative had wholly failed to convince his delegation and were indeed inadmissible in the context of the sufferings of the people of South West Africa. The International Court of Justice had already made certain recommendations which had been ignored by the Union Government. The South African representative had referred to the Charter; there was nothing in that document which favoured "apartheid" and the only possible support in the Charter for the Union representative's arguments lay in his reference to the Security Council.

54. The real meaning of the South African representative's statement was that South Africa feared the debate. At the current session, the anti-colonialist tide was carrying all before it. The African States had placed the question of South West Africa before the International Court of Justice because they wished to make use of any procedure whereby South Africa would be compelled to abide by its obligations. His delegation was entirely opposed to the Union representative's motion.

55. Mr. GEBRE-EGZY (Ethiopia) said that, together with Liberia, his country had submitted an application to the Court under article 7 of the Mandate and had done so in the light of the study the United Nations had made of the legal position. His delegation would be making a statement on the position at a forthcoming meeting and it accordingly opposed the adjournment of the debate.

56. Mr. CARPIO (Philippines), speaking on a point of order, said that members of the Committee should be given an opportunity to examine the question raised by the South African representative. He therefore moved the adjournment of the meeting under rule 120 of the rules of procedure.

57. The CHAIRMAN said that, the voting process having begun, he could not entertain the Philippine representative's motion.

At the request of the representative of Libya, a vote was taken by roll-call.

The Central African Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Union of South Africa.

Against: Central African Republic, Ceylon, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Japan, Jordan, Lebanon, Liberia, Libya, Mali, Mexico, Morocco, Nepal, Nigeria, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Saudi Arabia, Sudan, Sweden, Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina, Austria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia.

Abstaining: China, France, Italy, Netherlands, New Zealand, Portugal, Spain, United Kingdom of Great Britain and Northern Ireland, Australia, Belgium, Canada.

The motion was rejected by 67 votes to 1, with 11 abstentions.

58. Mr. SMITHERS (United Kingdom), explaining his vote, said that, as it had made clear during the discussion on the hearing of petitioners (1004th meeting), his delegation recognized the importance attached by the Committee to a debate on the agenda item now before it.

59. The application filed with the International Court of Justice by the Governments of Ethiopia and Liberia was a contentious proceeding to which the Union of South Africa was a party. Since the Court's decisions would be of the utmost importance not only for the inhabitants of South West Africa but for all Africa and for the United Nations itself, it was surely desirable that that decision should carry the greatest possible weight. It followed that the Committee should do nothing which might in any way impair the standing of the Court or enable it to be said that the Court's decisions had been the subject of improper influences or of pressure based upon political considerations. The case submitted to the Court would include a whole range of matters dealt with in the report of the Committee on South West Africa (A/4464) and regarding which the petitioners would no doubt wish to testify. There was therefore a danger that two separate organs of the United Nations would be pronouncing on the same subject matter at the same time, a situation which could hardly fail to derogate from the weight of the Court and to bring the proceedings of the United Nations and its organs into ridicule. The Committee ought not therefore to proceed without careful con-

sideration of the implications which flowed from the particular case and extended far beyond it.

60. At its 565th meeting, in connexion with the Anglo-Iranian Oil Company case, at a time when the International Court of Justice had not yet determined whether it had jurisdiction, the Security Council had decided to postpone discussion of the question. The Fourth Committee however, had preferred not to follow that precedent in the present case.

61. On the other hand, since it was surely important to establish what would or would not be prejudicial to the proceedings before the Court, the Committee might wish, in accordance with Annex II, Part I, recommendation 1 (d) of the rules of procedure, to avail itself of the help which the Sixth Committee might be able to give. In his submission, to proceed with the discussion and to hear witnesses in the matter of which the International Court was seized, might provide a party to the dispute with grounds for arguing that the proceedings had been prejudiced by the Committee's action and that the Court's decision need not therefore be respected.

62. The sub judice rule, as applied in the United Kingdom and in many other countries, was designed to protect the interests of parties before the courts and to maintain the reputation of the courts for rendering impartial justice. Under the rule the Court might punish or restrain individuals who would publish material likely to prejudice a fair trial or to appear to do so. In the case of the United Kingdom, although the proceedings of the House of Commons were privileged and the courts had therefore no power to restrain Members of Parliament, the House of Commons had imposed upon itself by its own voluntary act a discipline in that matter: a matter under jurisdiction by a court of law cound not be the subject of a debate. It was of course true that the position of the International Court of Justice was not the same as that of national courts, and it might be argued that, as the International Court could not enforce the sub judice doctrine against an individual in any particular country, the rule did not apply. Nevertheless, if it was considered that in any given case the International Court was concerned with the conduct of States and not of individuals, the analogy was a close one. The relationship of the International Court of Justice to the General Assembly resembled that of the courts to Parliament. In both cases the two organs were part of one constitutional structure; neither could restrain the utterances of Members of the General Assembly or of the House of Commons; in both cases, the impartiality of the Court and the rights of litigants should be protected against external pressures. In both cases, it was the House of Commons or the General Assembly which could, by expressing an opinion, bring the greatest pressure to bear upon the Court if it so wished. In his view it was the clear duty of the General Assembly and its Committees to exercise restraint similar to the discipline which the House of Commons and similar chambers imposed upon themselves with regard to matters which were before the International Court of Justice.

63. The Committee was confronted with a question of principle of profound importance and of far-reaching application and consequences. The great majority of Member States were absolutely dependent upon the rule of law in the world for their protection and for the assertion of their rights; the only substitute for the rule of law was the rule of force. The principal means of interpreting the law was the International Court, and the only means of assuring respect for its decisions was the loyal support of Member States and all the organs of the United Nations. His delegation therefore felt that they should exercise the utmost restraint in participating in the proceedings and hoped that other delegations would share its view.

64. Mr. LOUW (Union of South Africa) said that the Committee had decided, in his opinion unwisely, to proceed with the discussion of the item. His delegation could not be a party to a discussion of matters which were the subject of judicial action pending in the International Court of Justice: were it to do so it would itself be violating the sub judice rule. Consequently, it would not be able to participate in the discussion of that item in the manner in which it had been the announced intention of the South African delegation before proceedings were instituted in the Court. As proof of his delegation's intention he mentioned that a member of the Executive Committee of South West Africa, and the Chief Bantu Commissioner had specially come to New York six weeks previously for the purpose of dealing with all the matters raised and with allegations made in the report of the United Nations Committee on South West Africa (A/4464).

65. Mr. KIANG (China) said that his delegation had had no option but to abstain, since it had wished for time to study the Union representative's statement, the scope of which was not clear to it. Had the request been granted, it could not in his delegation's view have been applied to all phases of the discussion; in particular, the petitioners would have had to be heard.

66. Miss BROOKS (Liberia) said that, had she had the opportunity to do so before the vote, she would have associated her delegation with that of Ethiopia. In the ordinary way, as a party to the dispute, her delegation would have abstained; but in view of the Ethiopian representative's reference to the statement which he would be making about the step which Ethiopia and Liberia had taken, she had voted against the motion.

The meeting rose at 1 p.m.

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