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**The Authority Of The United Nations to 'Intervene'  
Within The Meaning Of Article 2(7) Of The Charter.**

**by**

**David R. Gilmour, B.L., (Glasgow), M.C.L., (McGill).**

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Volume IITable of Contents

	<u>Page</u>	
<b>Chapter I</b>	<b>The Power of Recommendation of the General Assembly.</b>	<b>1</b>
<b>Chapter II</b>	<b>The Relations of Member States with Franco Spain.</b>	<b>19</b>
	1. <b>The First Sessions:</b>	<b>19</b>
	(a) Background to the case;	19
	(b) General tenor of the ensuing discussion;	20
	(c) Resolutions presented during the course of the debate in the First Committee;	21
	(d) The Attitude of States towards these various proposals;	26
	(e) The subsequent attitude of States - The First Plenary Session.	37
	2. <b>The Second, Third and Fifth Sessions:</b>	<b>52</b>
	(a) The Second Session;	52
	(b) The Third Session.	53
	(c) The Fifth Session.	58
	3. <b>Conclusions.</b>	<b>59</b>
<b>Chapter III</b>	<b>The Treatment of People of Indian Origin in South Africa.</b>	<b>60</b>
	1. <b>The First Session.</b>	<b>61</b>
	2. <b>The Second Session.</b>	<b>63</b>
	3. <b>The Third Sessions:</b>	<b>67</b>
	(a) Resolutions Presented in The First Committee;	67
	(b) The Attitude of States - The First Committee;	70
	(c) The Plenary Session.	82
	4. <b>The Fifth Session:</b>	<b>82</b>
	(a) <b>The Attitude of States:</b>	<b>86</b>
	(i) <b>The <u>Ad Hoc</u> Political Committee;</b>	<b>86</b>
	(ii) <b>The Plenary Session.</b>	<b>88</b>
	5. <b>The Sixth Session:</b>	<b>91</b>
	(a) <b>The Attitude of States.</b>	<b>93</b>
	6. <b>The Seventh Session.</b>	<b>95</b>
	7. <b>The Eighth Session.</b>	<b>97</b>
	8. <b>The Ninth Session.</b>	<b>102</b>
	9. <b>The Tenth Session.</b>	<b>108</b>
	10. <b>The Eleventh, Twelfth and Thirteenth Sessions:</b>	<b>109</b>
	(a) <b>The Eleventh Session;</b>	<b>109</b>
	(b) <b>The Twelfth Session;</b>	<b>112</b>
	(c) <b>The Thirteenth Session.</b>	<b>115</b>
	11. <b>The Post-Repertory Period.</b>	<b>118</b>
	12. <b>General Conclusions.</b>	<b>119</b>

<b>Chapter IV</b>	<b>The question of Race Conflict in South Africa.</b>	<b>120</b>
	1. The Seventh Session;	120
	(a) The Attitude of States:	121
	(i) The Rigid Approach;	121
	(ii) The Flexible Approach;	123
	(b) The Scandanavian Draft Resolution;	142
	(c) Voting on the Draft Resolutions;	143
	(d) Conclusions.	145
	2. The Eighth, Ninth and Tenth Sessions:	146
	(a) States which adhered to the non-technical interpretation of intervention;	146
	(b) States which adhered to the technical interpretation of intervention;	147
	(c) States which were uncertain on the question of competence;	148
	(d) The compromise view;	149
	(e) Substantive resolutions proposed at these sessions and the voting thereon:	155
	(i) The Eighth Session;	155
	(ii) The Ninth Session;	157
	(iii) The Tenth Session:	159
	3. The Eleventh, Twelfth and Thirteenth Sessions:	162
	(a) The Compromise view;	163
	(b) Resolutions adopted at these sessions:	168
	(i) The Eleventh Session;	168
	(ii) The Twelfth Session;	169
	(iii) The Thirteenth Session;	170
	4. The Post-Repertory Period.	171
	5. Conclusions.	173
<b>Chapter V</b>	<b>The Question of Cyprus.</b>	<b>174</b>
	1. The Eleventh Session;	174
	2. The Twelfth Session;	177
	3. The Thirteenth Session.	179
<b>Chapter VI</b>	<b>The Question of Algeria.</b>	<b>180</b>
	1. The Eleventh Session:	180
	(a) The Eighteen-Power draft resolution;	180
	(b) The Six-Power draft resolution;	181
	(c) The Three-Power draft resolution;	181
	(d) The Attitude of States - The First Committee;	181
	(e) Voting on these draft resolutions;	190
	(f) The Plenary Session;	191
	(g) Conclusions.	192
	2. The Twelfth Session:	195
	(a) The Seventeen-Power draft resolution;	195
	(b) Amendments;	196
	(c) The Seven-Power draft resolution;	196

	<u>Page</u>
(d) The Attitude of States - The First Committee;	196
(e) Voting on the above proposals;	202
(f) The Plenary Session;	203
3. The Thirteenth Session:	204
(a) The Draft Seventeen-Power Resolution;	204
(b) Haitian Amendments;	205
(c) The Attitude of States - The First Committee;	205
(d) Voting in the First Committee;	207
(e) The Plenary Session.	207
4. The Post-Repertory Period.	207
Chapter VII      The Hungarian Question.	209
Chapter VIII    Requests to States to Stay Execution of Death Sentences.	211
I Greece:	211
1. The Third Session:	213
(a) Attitude of States towards the Yugoslav Proposal;	214
(b) Voting on the various proposals;	220
(c) Conclusions.	221
2. The Fourth Session:	223
(a) Attitude of States;	224
(b) Voting on the Polish Proposal;	231
(c) Conclusions;	232
(d) The second phase of the debate in the Fourth Session;	233
(e) Other resolutions submitted on this subject at the Fourth Session;	237
(f) The Question of Competence;	238
(g) Conclusions;	241
(h) The Fourth Plenary Session.	242
3. The Fifth Session.	244
4. The Sixth Session.	246
5. Conclusions.	248
II Spain.	248
Chapter IX      Post-Repertory Cases:	254
1. The Case of Tibet;	254
2. The Question of Oman;	254
✓ 3.&4. The Questions of Angola and Southern Rhodesia.	255
Chapter X      The Violation of Human Rights in the Union of Soviet Socialist Republics and the Question of West New Guinea.	257
1. The Violation of Human Rights in the Union of Soviet Socialist Republics;	257
2. The Question of West New Guinea.	262
Chapter XI      ✓ Conclusions - The General Assembly.	267

## Chapter I

### The Power of Recommendation of the General Assembly.

The apparent consensus of opinion emerging from the statements of principle in the agenda debates suggests that little could be obtained from a study of the substantive debates on these items. The majority of States which have considered the problem of defining intervention considering that any substantive discussion on or recommendation concerning a domestic matter constitutes intervention and on that ground having sought to have such items deleted from the agenda altogether, it is to be expected that similar statements of principle would be found in the substantive debates. This is indeed what has happened and no less that twenty-three States have, at various times during the course of the debates on the various items, made the claim that as a particular matter was domestic the United Nations had no competence to deal with it. These States include: Australia, Argentina, Albania, Belgium, Bulgaria, Byelorussian S.S.R., Colombia, Costa Rica, Czechoslovakia, Dominican Republic, France, Hungary, Netherlands, Portugal, Pakistan, Republic of South Africa, Romania, Spain, Turkey, Ukrainian S.S.R., U.S.S.R., United Kingdom and Venezuela.<sup>1</sup>

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1. The following is a list of references where such statements can be found. Because of the massive amount of practice on this point, it does not purport to be exhaustive.
- Australia: Case 2: G.A., (V), Ad Hoc Pol.Com., 42nd mtg., para. 39; ibid, Plen., 315th mtg., paras. 24-25; ibid, 7th session, Ad Hoc Pol. Com., 10th mtg., paras. 13-16; ibid, 8th session, Ad Hoc Pol.Com., 18th mtg., paras. 23-25; ibid, 20th mtg., paras. 8-12; ibid, 11th session, Sp.Pol.Com., 7th mtg., para. 32; ibid, 10th mtg., paras. 42-43; ibid, 12th session, Sp.Pol.Com., 61st mtg., para. 24; Case 11: G.A., (VII), Ad Hoc Pol.Com., 16th mtg., paras. 34-49; ibid, 11th session, Sp.Pol.Com., 15th mtg., para. 11; ibid, 12th session, Sp.Pol.Com., 57th mtg., paras. 22-23; ibid, 13th session, Sp.Pol.Com., 94th mtg., paras. 20-23; Case 24: ibid, 11th session, 1st Com., 849th mtg., paras. 22-33; ibid, 12th session, 1st Com. 931st mtg. paras. 19-28; ibid, 13th session, 1st Com., 1000th mtg., paras. 19-21; Case 27: G.A., (XI), 1st Com., 844th mtg., paras. 8-9; ibid, 12th session, 1st Com., 924th mtg., para. 13-18;
- Argentina: Case 1: G.A., (I/2), 1st Com., 36th mtg., p. 246; ibid, 3rd session,

second part, 1st Com., 260th mtg., p. 204; Case 2: ibid, 3rd session, 2nd part, 1st Com., 266th mtg., pp. 284-285;

Albania: Case 30: G.A., (ES-II), Plen., 568th mtg., para. 74; ibid, 11th session, Plen., Vol. I, 584th mtg., para. 131; ibid, 14th session, Plen., 849th mtg. para. 136.

Belgium: Case 2: G.A., (VIII), Ad Hoc Pol. Com., 14th mtg., para. 16; ibid, 3rd session, 2nd part, 1st Com., 266th mtg., pp. 287-289; ibid, 11th session, Sp. Pol. Com., 9th mtg., paras. 10-11; ibid, 12th session, Sp. Pol. Com., 61st mtg., paras. 34-36; Case 11: G.A., (VII), Ad Hoc Pol. Com., 16th mtg., paras. 70-76; ibid, 21st mtg., para. 24; ibid, 8th session, Ad Hoc Pol. Com., 32nd mtg., paras. 27-39; ibid, 10th session, Ad Hoc Pol. Com., 11th mtg., paras. 13-15; 11th session, Sp. Pol. Com., 12th mtg., para. 18; ibid, 12th session, Sp. Pol. Com., 57th mtg., paras. 24-26; ibid, 13th session, Sp. Pol. Com., 88th mtg., paras. 12-13; ibid, 94th mtg., para. 27; Case 24: G.A., (XI), 1st Com., 853rd mtg., paras. 4-10; ibid, 12th session, 1st Com., 930th mtg., paras. 31-32; Case 27: G.A., (XI), Plen., Vol. II, 654th mtg., para. 108; ibid, 13th session, 1st Com., 1022nd mtg., paras. 53-54.

Bulgaria: Case 30: G.A., (ES-II), Plen., 568th mtg., paras. 57-69; ibid, 573rd mtg., paras. 22-28; ibid, 11th session, Plen., Vol. I, 583rd mtg., para. 165; ibid, 14th session, Plen., 850th mtg., para. 15.

Byelorussian S.S.R., Case 30: G.A., (ES-II), Plen., 569th mtg., paras. 45-54; ibid, 11th session, Plen., Vol. I, 584th mtg., para. 12;

Colombia: Case 11: G.A., (VIII), Ad Hoc Pol. Com., 33rd mtg., paras. 41-47; ibid, 38th mtg., paras. 21-33; ibid, 11th session, 1st Com., 843rd mtg., paras. 5-7.

Costa Rica: Case 1: G.A., (I/2), 1st Com., 35th mtg., p. 232.

Czechoslovakia: Case 7: G.A., (III/1), 6th Com., 137th mtg., p. 748; Case 30: ibid, (ES-II), Plen., 569th mtg., paras. 2-10; ibid, 573rd mtg., paras. 32-36; ibid, 11th session, Plen., Vol. I, 583rd mtg., para. 118.

Dominican Republic: Case 11: G.A., (XIII), Sp. Pol. Com., 94th mtg., paras. 17-19.

France: Case 11: G.A., (VII), Ad Hoc Pol. Com., 21st mtg., para. 3; ibid, 8th session, Ad Hoc Pol. Com., 38th mtg., paras. 2-6; ibid, 11th session, Sp. Pol. Com., 16th mtg., para. 34; ibid, 13th session, Sp. Pol. Com., 94th mtg., paras. 14-16; Case 24: ibid, 11th session, 1st Com., 852nd mtg. paras. 27-33; ibid, 12th session, 1st Com., 930th mtg., paras. 33-39; Case 27: ibid, 11th session, 1st Com., 830th mtg., paras. 1-2; ibid, 843rd mtg., para. 34.

Hungary: Case 30: G.A., (ES-II), Plen., 568th mtg., paras. 3-5; ibid, 11th session, Plen., Vol. I, 582nd mtg., para. 28; ibid, 604th mtg., para. 3.

Netherlands: Case 11: G.A., (VII), Ad Hoc Pol. Com., 16th mtg., paras. 31-32; Case 27: ibid, 11th session, 1st Com., 844th mtg., para. 29; ibid, 12th session, 1st Com., 924th mtg., para. 3.

1. Pakistan: Case 11: G.A., (VII), Ad Hoc Pol.Com., 15th mtg., para. 17.

Portugal: Case 11: G.A., (XI), Sp.Pol.Com., 16th mtg., para. 38; ibid, 12th session, Sp.Pol.Com., 57th mtg., para. 40; ibid, 13th session, Sp.Pol.Com., 94th mtg., para. 24; Case 24; ibid, 11th session, 1st Com., 853rd mtg., paras. 53-54; ibid, 12th session, 1st Com., 931st mtg., paras. 57-62; Case 27: ibid, 11th session, 1st Com., 846th mtg., para. 65; ibid, 12th session, 1st Com. 922nd mtg., paras. 46-47; ibid, 13th session, 1st Com., 1023rd mtg., paras. 15-16.

Republic of South Africa: Case 2: G.A., (III/2), 1st Com., 265th mtg., p. 277; ibid, Plen., 212th mtg., pp. 443-444; ibid, 5th session, Plen., 315th mtg., paras. 8-15; ibid, 8th session, Ad Hoc Pol.Com., 14th mtg., para. 2; Case 11: G.A., (VII), Plen., 401st mtg., paras. 80-84; ibid, 8th session, Ad Hoc Pol.Com., 32nd mtg., paras. 2-6; ibid, Plen., 469th mtg., paras. 15-28; ibid, 10th session, Ad Hoc Pol.Com., 3rd mtg., paras. 3-7.

Romania: Case 30: G.A., (ES-II), Plen., 568th mtg., paras. 107-114.

Spain: Case 11: G.A., (XIII), Sp.Pol.Com., 90th mtg., paras. 32-36; Case 27: 13th session, 1st Com., 1018th mtg., paras. 8-10.

Turkey: Case 24: G.A., (XI), 1st Com., 848th mtg., para. 16.

Ukrainian S.S.R.: Case 7: G.A., (III/2), Plen., 197th mtg., pp. 157-158; ibid, (ES-II), Plen., 569th mtg., paras. 13-14; ibid, 11th session, Plen., Vol. II, 635th mtg., para. 61.

U.S.S.R., Case 7: G.A., (III/2), Plen., 196th mtg., p. 153; Case 30: ibid, (ES-II), 573rd mtg., paras. 11-14; ibid, 11th session, Plen., Vol. I, 582nd mtg., para. 81; ibid, 605th mtg., para. 60; ibid, 14th session, Plen., 849th mtg., para. 42.

United Kingdom: Case 11: G.A., (VIII), Plen., 401st mtg., para. 108; ibid, 8th session, Ad Hoc Pol.Com., 34th mtg., paras. 3-11; ibid, 10th session, Ad Hoc Pol.Com., 5th mtg., para. 25; ibid, 9th session, Ad Hoc Pol.Com., 43rd mtg., paras. 1-2; ibid, 13th session, Sp.Pol.Com., 94th mtg., paras. 9-13; Case 24; ibid, 11th session, 1st Com., 847th mtg., para. 60; ibid, 12th session, 1st Com., 927th mtg., para. 3; Case 27: ibid, 11th session, 1st Com., 834th mtg., paras. 1-4; ibid, 12th session, 1st Com., 915th mtg., para. 55.

Venezuela: Case 2: G.A., (VI), Ad Hoc Pol.Com., 32nd mtg., para. 53.

The depth of the opposition to any United Nations action with respect to a matter which is considered to fall essentially within the domestic jurisdiction of a particular State is shown by the fact that some States have indicated that they could not even accept a general recommendation which, though it deals with a particular problem in a vague general way and is addressed not to one nation but to all, originates in a discussion of the domestic affairs of a particular State.<sup>1</sup>

Few States, however, have supported the technical definition of intervention

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1. See the statements of Belgium: G.A., (VII), Ad Hoc Pol. Com., 21st mtg., para. 24:

"The Belgian delegation would abstain on the Scaninavian draft resolution as a whole. That draft was acceptable as far as its ideas were concerned, but having been submitted in the course of the debate it had acquired a concrete significance which was contrary to the Belgian delegation's view that the General Assembly was not competent to discuss apartheid in the Union of South Africa."

France held the same opinion; see G.A., (VII), Ad Hoc Pol. Com., 38th mtg., para. 15; as did the United Kingdom; see G.A., (VII), Plen., 401st mtg., para. 108. The South African view of such resolutions was explained at the seventh session in the following terms; see G.A., (VII), Plen., 401st mtg., paras. 83-84:

".... My delegation asserts that any resolution relating to the present item, whatever its nature, would be a contravention of Article 2, paragraph 7, of the Charter,...."

Allow me to refer, first of all, to the draft resolution which was originally sponsored by the delegations of Denmark, Iceland and Norway. Now, it is true, of course, that this draft resolution seeks to set out a general statement of principles which do not refer specifically to the Union of South Africa. I submit, however, that it does, by implication, seek to criticize and, in fact, condemns the policies of the South African Government. Moreover, it emanates from a discussion and the consideration of South Africa's domestic affairs and is therefore, in the view of my Government, unconstitutional. It is the assertion, consequently, of my delegation, that the resolution constitutes intervention in the sense in which that word was used in Article 2, paragraph 7 of the Charter."



in the substantive debates. In fact, only eight appear to have done so with any conviction, viz., Ceylon, Ecuador, Egypt, Guatemala, Indonesia, India, the Philippines and to some extent, Burma.<sup>1</sup>

1. Ceylon: G.A., (XII), Sp.Pol.Com., 61st mtg., para. 50.

Egypt: G.A., (XI), 1st Com., 838th mtg., paras. 21-22 where the Egyptian delegate said that:

" On the otherhand, he wondered how one could say that the consideration of a question and a recommendation by the General Assembly constituted interference in matters which fell essentially within the domestic jurisdiction of States within the meaning of Article 2, paragraph 7, of the Charter. The word 'intervene' used in Article 2, had been defined by Professor Rousseau as follows: (Droit international public [Paris, Recueil Sirey, 1953] p. 321)

' Intervention is the action of a state which is carrying out an act of interference in the internal or external affairs of another State to require the performance or non-performance of a specific thing. The intervening State acts in an authoritative way, seeking to impose its will, to exercise pressure in order to make its views prevail.'

The act of including the question of Algeria in the agenda of the Assembly, the act of discussing that question or making a recommendation could not in any case constitute intervention or interference in the internal affairs of France. Moreover, United Nations practice had always upheld that interpretation of Article 2, paragraph 7. ....That interpretation had been accepted in writings on the subject; it had been supported by Professor Hersch Lauterpacht. ...."

However, Egypt has not been a perpetual supporter of the technical definition. In particular, where there was some danger that she herself might have been the subject of an 'investigation' under the aegis of the Economic and Social Council, she invoked Article 2(7) in an effort to prevent this, although such an investigation does not come within the prohibited degrees of intervention as seen by Professor Lauterpacht. The patent contradiction in these two positions renders Egypt's statements somewhat suspect. See E. & S.C. (VIII), 256th mtg., p. 375 - The infringement of Trade Union Rights.

Ecuador: G.A., (VIII), Ad Hoc Pol.Com., 36th mtg., paras. 25-41; and *ibid*, 10th session, Ad Hoc Pol.Com., 7th mtg., para. 25.

Guatemala: G.A., (X), Ad Hoc Pol.Com., 8th mtg., para. 2.

Indonesia: G.A., (V), Ad Hoc Pol.Com., 42nd mtg., para. 57;

India: G.A., (X), Plen., 530th mtg., para. 251.

Philippines: G.A., (V), Ad Hoc Pol.Com., 43rd mtg., para. 8.

Burma: G.A., (XI), Sp.Pol.Com., 10th mtg., para. 31, where her representative said that:

".... the Government of the Union of South Africa continued to maintain that, under Article 2, paragraph 7, of the Charter, the United Nations was not competent to discuss the question of the treatment of people of Indian origin in the Union of South Africa. Resolutions previously adopted by the General Assembly had been disregarded, thereby making the situation worse. It was true that the United Nations could not impose a decision on any Member, but it should continue to promote the effective observance of human rights and fundamental freedoms for all and to endeavour to improve the lot of the victims of racial discrimination in the Union of South Africa."

This statement does not appear to commit Burma irrevocably to supporting the technical interpretation of intervention.

The position assumed by Greece, however, is somewhat unsatisfactory. In the agenda debate on the Cyprus Question at the ninth session, her delegate supported the inclusion of this item because, in his opinion, intervention bore the technical meaning attached to it by Professor Lauterpacht. But, just prior to this, at the eighth session, her delegate had made a statement relevant to the racial situation in South Africa which both contradicted and to some extent laid the foundations for her later one. The extent of the contradiction in Greece's thinking will be evident from the following passage: G.A., (VIII), Ad Hoc Pol. Com., 33rd mtg., paras. 35-39:

"His delegation .... had throughout contested the General Assembly's competence to consider the question, and its attitude on that point had not changed. It held that the matter was essentially within the domestic jurisdiction of South Africa and that consequently the United Nations had no right to intervene in the case. ....

His delegation had nevertheless voted for the inclusion of the item in the agenda of the present session. It had done so in deference to the resolutions previously adopted by the Assembly, but had made it clear that its vote did not in any way prejudice its position on the question of the Assembly's competence. Furthermore, it had hoped that the report of the Commission appointed to study the racial situation in the Union of South Africa set up by the General Assembly at its seventh session would throw new light on the problem.

The Greek delegation's position was dictated by its concern to safeguard the principle set forth in the Charter that the United Nations should not intervene in matters essentially within the domestic jurisdiction of Member States. The Greek delegation which had already challenged as unconstitutional the General Assembly's jurisdiction on the question of the treatment of persons of Indian origin in South Africa, could not but take the same attitude on the question of racial conflict in South Africa, since it was convinced that the racial situation in the Union could not be invoked as justifying application of Article 14 of the Charter."

The Greek delegation here seemed to indicate that where a matter fell essentially within the domestic jurisdiction of a particular State, the United Nations was incompetent to deal with it. But having made this impression, the Greek delegate went on to say:

"The South African Government was in fact being charged, first, with having created, by its policy of apartheid, a dangerous situation that constituted a threat to international peace and security and, second, with having flouted the principle of respect for human rights. .... With regard to the second charge, in reply to those who contended that any action on the part of the United Nations might be precluded if the principle of non-intervention was invoked to debar application of the Charter provisions relating to human rights, he would say that it was wrong to suppose that the provisions of Article 2, paragraph 7, were completely irreconcilable with those of the various articles of the Charter relating to human rights. A distinction should be made between the Assembly's power to discuss a matter and to initiate investigations, and its power to make recommendations. The Assembly would not be able to make a recommendation on a matter within the domestic jurisdiction of a State without intervening in its internal affairs, but the discussion and examination of such a question by the Assembly might not constitute interference in the domestic affairs of States, if the Assembly took no further action.

In including the question of racial conflict in South Africa in the agenda on two occasions, and by setting up the Commission, the Assembly had reached the extreme limits of its powers. It should avoid creating a dangerous precedent and should be careful not to pass judgement on the racial situation in South Africa. It should not regard itself as authorized to dictate the racial policy which the South African Government should adopt."

On the one hand, the Greek delegation seemed to indicate that any consideration of a domestic matter was outwith the competence of the General Assembly. Then it modified its view somewhat and indicated that discussion and investigation might not constitute intervention. This contradiction would have been hard enough to deal with. But then at the next session, the Greek delegation maintained that intervention bore the technical meaning attached to it by Professor Lauterpacht, i.e., even recommendations concerning domestic matters were within the powers of the General Assembly. These contradictions render Greek contributions to this controversy of doubtful use.

The only other substantial measure of support for the technical definition of intervention is to be found in the first report of the United Nations Commission on the Racial Situation in the Union of South Africa. This Commission,<sup>1</sup> after a detailed analysis of the arguments on the subject, came to the conclusion that the majority of the Members were of the opinion that the word 'intervene' means dictatorial interference. Hence, it concluded that as discussions of items and the adoption of recommendations thereon do not amount to dictatorial interference, neither of them amounted to intervention within the meaning of the Charter.<sup>2</sup> Furthermore, the Commission claimed that this conclusion was in keeping with the intentions of the San Francisco Conference on International Organization.<sup>3</sup>

With all respect to the distinguished members of the Commission it is submitted that their conclusions are not valid.<sup>4</sup> The San Francisco records do not bear out their findings. To interpret these records otherwise requires substantial effort. Furthermore, while the Commissioners might have had access to unpublished information from the Members on this subject, it certainly does not appear from the practice of the General Assembly that the majority of them do believe that intervention as that term is used in Article 2(7), means dictatorial interference. Admittedly only a minority of Members have expressed an opinion on this matter. Nevertheless, of those who have expressed an opinion, a majority supports, in principle, the opposite

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1. The Commission was set up at the seventh session of the General Assembly, pursuant to Res. 616A(VII).

2. G.A., (VIII), Suppl. No. 16, Part I, Chapter II, Section VI(a), para. 134 et seq.

3. *ibid.*

4. The Members of the Commission were, Mr. Hernan Santa Cruz of Chile, Mr. Dantes Bellegarde of Haiti, and Professor Henri Laugier of France.

interpretation. No other conclusion is possible from an examination of the General Assembly records.

In principle then, a majority of the Members of the United Nations who have considered this problem appear to favour the broad or non-technical interpretation of the term 'intervene', and view as illegal discussion of or recommendations concerning matters which fall essentially within the domestic jurisdiction of any particular State or group of States.<sup>1</sup>

1. Before proceeding further with the examination of the subsequent practice of the General Assembly on this point, it is convenient here to notice one variant of the technical definition which was put forward by a small group of Latin American States. Guatemala, Mexico, Panama, Uruguay and, to a lesser extent, Cuba have suggested that the prohibition of intervention in the domestic affairs of Member States cannot apply to collective action by the Members of the United Nations, taken under the Charter. Hence, they conclude, as a recommendation is an example of collective action, it does not amount to intervention.

Referring to the relations of Member States with Franco Spain and the various proposals which had been put forward on that subject the Guatemalan delegate said that: [G.A., (I/2), 1st Com., 38th mtg., p. 265].

"... his Government had always supported the principle of non-intervention in its true sense, understanding it to be the interference of one State in the affairs of another by military means, economic pressure or similar measures. He thought, however, that the United Nations could take action to defend a principle of law or the fundamental rights of man and, for this reason, sought collective action against Franco, believing it not contrary to Article 2, paragraph 7."

Elaborating this same theme later in the same session, the Guatemalan delegate further said: [G.A., (I/2), Plen., 59th mtg., p. 1204].

" Collective repudiation of the Franco regime, the sympathy of the democratic countries towards a people which fought heroically for thirty-two months against the invading armies of Hitler and Mussolini, cannot possibly be confused with the old unilateral interference in the internal life of weak nations by a single great-Power, and not wholly in defence of President Roosevelt's four freedoms.

This collective action which the conscience of the civilized world will take in support of Spanish democracy .... does not conflict with the act of Chapultepec in so far as concerns the aspirations of human beings to justice and freedom..... all the delegations to this world Assembly refused unanimously to admit Franco to this world organization, and, .... it did not occur to

anyone to describe that decision as a sin of intervention or a violation of the falangist sovereignty of Don Francisco Franco.

Again at the first session of the General Assembly the same view was put forward by the delegation of Mexico during a debate on the treatment of people of Indian origin in the Union of South Africa. Mr. de la Colina said: [G.A., (I/2), Plen., 51st mtg., p. 1024].

" The third part of my argument relates to a point particularly dear to the countries of America. The principle of non-intervention has in fact been raised by us to the status of an inter-American axiom. It is an active principle of incalculable value in the relations between States, the sovereignty and legal equality of which are laid down in Article 2, paragraph 1, of the Charter.

But this does not mean, even if the most specious subtleties are invoked, that mere recommendations by the General Assembly, based directly on the actual provisions of the Charter, an international instrument which we have all freely signed and ratified, solemnly pledging ourselves to carry out in good faith the obligations we have contracted in virtue of the Charter - all this, I say, does not mean that such recommendations constitute interference by the Assembly in matters which are essentially within the domestic jurisdiction of any State, as stated in Article 2, paragraph 7, of the Charter.

It is a dangerous play on words and a sophism to speak of interference when the only thing that is involved is legitimate collective action by the Assembly, expressed in a moderate, restrained, courteous, and conciliatory recommendation that is based on the Charter and introduces no implied obligation contrary to paragraph 7 of Article 2 of the Charter mentioned above.

Let us properly apply the word 'interference' to the arbitrary action of one or more States which influence or wish to influence the internal or external affairs of another State. We vigorously condemn such action and reject it with indignation. Thus, the representatives of my country have ardently upheld the principle of non-intervention in international assemblies and, with exemplary firmness, in diplomatic negotiations.

Our zeal, therefore, must not be swayed by the mere sound of words. Let us extract the true meaning and significance of terms from international life as it is.

Let us examine objectively the contents of the document which was signed at San Francisco, and let us not, at each step, hide behind Article 2, paragraph 7, in an attempt to evade our fundamental obligations. Let us not invoke it

as a clause which frustrates the other purposes and principles of the United Nations."

The most detailed exposition of this view was given by the Panamanian delegation at the first session of the General Assembly, during the debate on the relations of Member States with Franco Spain. In the debate in the First Committee, Mr. Alfaro said on behalf of Panama that:  
 [G.A., (I/2), 1st Com., 36th mtg., p. 240].

(1) In barring Franco Spain from membership in the United Nations, the latter had done more than break relations with Franco, since they had formally declared that they would not maintain any relations with him so long as his regime had not been replaced by a democratic one. Therefore it was not consistent to hesitate now over some action likely to produce the desired change in regime.

(2) The word intervention had been misused and misinterpreted. The principle of non-intervention had blinded Members to realities and prevented them from seeing that the favoured system that they had set up in San Francisco was based on collective action or intervention in order to consolidate the peace and security of the nations as well as the freedom and dignity of men. The essence of the United Nations is collective action. The Security Council which acts on behalf of fifty-four nations does nothing else but take collective action, and the General Assembly acts in the same manner when it makes a resolution with regard to one or more nations. Intervention was a word used in bygone days when big Powers resorted to unilateral action such as military occupation or punitive expeditions in order to assure their political control of certain countries. ....

Article 2, paragraph 7, of the Charter, frequently quoted, did not prevent either collective action from being taken to enforce the principles set forth in the Charter. To deny the United Nations the right to act collectively would be tantamount to destroying the very purposes on which it was based. The principle of collective action had been repeatedly reaffirmed in the Charter in Articles 5, 9, 41, 42 and also in Article 2, paragraph 6. ....Therefore the word intervention should not be used but rather the word interdependence should be applied to the relations between nations of the world.

(3) On the other hand, the severance of diplomatic relations with Spain was not an act of intervention since it was a well-known principle of international law that the independence of States did not depend on their being recognized by other countries. Recognition or severance of diplomatic relations rested within the national jurisdiction of every State."

Returning to the same subject in the first plenary session of the General Assembly Mr. Alfaro said: [G.A. (I/2), Plen., 58th mtg., p. 1219].

".....Here we are, the delegations of Latin American Republics, and the delegations of all the other countries of the world, which unanimously declare our abhorrence of intervention by one State in the internal or external affairs of another State. In these words an American multilateral pact defines the universally respected principle of non-intervention; the meaning of the treaty clause, as well as the history of its establishment, combine to show in an indisputable manner, that it had only in mind unilateral intervention, arbitrary intervention, unauthorized military intervention of the type we saw in Spain when Hitler and Mussolini entered into a conspiracy to convert that noble and unfortunate country into a field of experimentation for their future aggression, to destroy its democratic government and to build up between the Mediterranean and the Pyrenees a redoubtable bulwark of fascism.

That is the kind of intervention we all hate; that is the kind of intervention which is barred, condemned, outlawed, by the principle of sovereignty and by the principle of equality. But the dogma of non-intervention has nothing to do with the great system of collective action that we have set up by the Charter of San Francisco. Arbitrary intervention infringes upon the principles of independence. Collective action is based upon the doctrine of interdependence. Collective action is foreseen, authorized, and agreed upon in specific provisions of the Charter; it is indispensable for the United Nations to exert this collective action, because without it we cannot have peace and security, we cannot promote human rights, we cannot have disarmament, we cannot make the trusteeship system work, we cannot have international co-operation, we cannot put into effect any of the great vital, basic principles for which we have organized the world community of States.

But, despite all this, the argument against the proposition under consideration is reduced to hurling, at those of us who advocate it, that hateful word 'intervention'. Where is the intervention? What does the resolution say? Nothing that implies physical or material action in Spain; nothing that is not within the sovereign rights of any and all Powers to do; nothing that goes beyond expressing condemnation of the present Spanish regime; nothing that is not in absolute conformity with the opinions, the desires and the aspirations that we have all expressed, namely, that the Franco Government must go, that it must be replaced by a democratic government, because it is the incarnation of everything we condemn, everything we hate, everything we have fought against, everything we yearn to see disappear from the face of the earth.



To invoke Article 2, paragraph 7, of the Charter against this resolution is to miss the point entirely. We are not dealing here with any matter essentially within the domestic jurisdiction of Spain. We are making recommendations that concern only the individual sovereignty of the Members of the United Nations, because each nation is absolutely free to maintain or not to maintain ambassadors or ministers in any given country.

....situations that are an actual or potential danger to the peace of the world, and constitute a continuous, notorious, grave and shocking violation of the most elementary human rights, are not matters within the domestic jurisdiction of any particular State; they are essentially within international jurisdiction, essentially within the powers of the United Nations."

The Uruguayan delegate, Mr. Mora, said, during the debate in the first session of the General Assembly on the relations of Members with Franco Spain, that the General Assembly was competent to pass recommendations to help to realize human rights and fundamental freedoms, i.e., he inferred that the matter of conditions in Spain was not a domestic issue and for this assertion he relied on Article 15(1)(b). However, irrespective of this assertion, he claimed that a recommendation did not amount to intervention. He said: [G.A., (I/2), Plen., 59th mtg., p. 1211].

"The Uruguayan Government, for its part, believes that certain concepts should be established in connection with various assertions, made in the course of debates, on the principle of non-intervention and the way in which that principle might affect the application of the Charter in the matter we are now considering. It feels that to evoke the principle of non-intervention in order to paralyse collective action by organs expressly constituted to act on behalf of the international community is a manifest contradiction.

Uruguay respects, and always has supported, the principle adopted by inter-American conventions repudiating intervention by any State in the internal or external affairs of other States; but it holds that this principle refers always to unilateral intervention only, or possibly to intervention by a group of States acting arbitrarily or on their own initiative. It cannot be maintained that the principle, as accepted at San Francisco, could apply to the basic organs of the United Nations community."

The position of these four States, whatever its substantive merits, is at least reasonably clear. No recommendation can constitute intervention even though it is addressed to a particular State, because if it did the entire system of collective action, envisaged by the Charter system would, in their opinion, break down.

The position of Cuba was not so unequivocal, however. In one and the

same debate her delegates made statements which were rather contradictory and it is therefore not too easy to give any valid assessment of her views on this subject. Thus at the first session of the General Assembly, during a debate on the relations of Member States with Franco Spain, her delegate said that: [G.A., (I/2), 1st Com., 36th mtg., p. 241]

"..... the United States and Colombian resolutions were both in accordance with the stand taken by Cuba during the past year in suggesting a plebiscite for the Spanish people. Because of the cruel civil war which established the Franco regime and because of personal sympathy with the suffering of the Spanish people under Franco's oppression, the Latin-American republics were particularly concerned with the situation. The many exiles and thousands of people deprived of fundamental freedoms made it a world problem.

While the Cuban Government had not broken relations with the Franco regime it had opposed any tyranny and was most interested that the Spanish people should regain a peaceful and democratic government without the horrors of another civil war.

The small Latin-American countries wished to protect their independence by upholding the principle of non-intervention as expressed in Article 2, paragraph 7, of the Charter, but this case was not a question of intervention in the old sense because it was the collective action of the United Nations as a whole. If the resolution did not receive the required majority vote, because of this principle, the disastrous result would be to strengthen Franco."

This statement would seem to suggest that in the opinion of the Cuban Government collective action by the Members of the United Nations did not constitute intervention. Yet, later in the very same debate the Cuban delegation said that: [G.A., (I/2), 1st Com., 38th mtg., p. 265]

".....the United Nations were unanimously agreed that democracy and freedom should be restored to the Spanish people, but did not agree on the method to achieve this purpose. Cuba was convinced that if the United Nations did not interfere, the Spanish people could solve their problem themselves. The principle of non-intervention in Article 2, paragraph 7, should not be violated and, while individual action by States was not intervention, collective action was."

This statement would appear to completely contradict the one made earlier in the debate.

In the plenary session of this debate, however, it appeared that Cuba did not altogether favour collective intervention, irrespective of what was involved.

Here her delegate indicated that United Nations action was not justified just because it was collective. Rather some regard had to be had for the type of action which was to be taken collectively. By this statement, the Cuban delegation seemed to take its stand somewhere in between its two previous opinions. Her delegate said: [G.A., (I/2), Plen., 58th mtg., p. 1179].

" The proposal to withdraw heads of missions in no way affects my Government's foreign policy. I can only confirm that Cuba has not and has never had any ambassador accredited to the Franco Government. Nevertheless, the Cuban delegation cannot vote in favour of this motion because, in our view, collective action of this kind constitutes intervention in a State's internal affairs, although to a lesser degree than does the collective severance of relations. We shall not vote against this motion because we do not wish to prejudice it, since its rejection might strengthen the Franco regime, with whose doctrines and politics we do not agree."

The view that collective action by the Members of the United Nations is not intervention, is not held by all Latin-American countries. El Salvador, for example, was opposed to the collective withdrawal of ambassadors from Madrid in an effort to oust Franco because such collective pressure would, in her opinion, amount to intervention in Spain's domestic affairs. In the plenary session the delegate from El Salvador explained his country's point of view thus: [G.A., (I/2), Plen., 58th mtg., p. 1187-1190; see also G.A., (III/2), 1st Com., 262nd mtg., pp. 237-238.]

" Nobody can doubt that the question of maintaining its present government or of changing this government is a matter that belongs to the internal jurisdiction of Spain. Therefore, the contemplated action of the United Nations which has as its purpose to isolate the Spanish people and to surround them with all sorts of difficulties that might lead to a state of desperation and might compel them to overthrow their government, is an act of positive intervention on the part of the United Nations in a matter which is essentially within the internal jurisdiction of Spain. Such intervention is a flagrant violation of the Charter of our international Organization.

It is true that paragraph 7 of Article 2 of the Charter of the United Nations contains an exception to the strict prohibition of intervention in the internal affairs of a State, and that exception consists of the coercive measures which are enumerated in Chapter VII of the Charter of the United Nations. But we may here put a special emphasis on the two following circumstances.

First, the coercive measures which are contemplated in Chapter VII of the Charter of the United Nations are within the special jurisdiction of the Security Council, which is the executive organ of the United Nations. For this reason, the name of the General Assembly is not mentioned, not in a single instance, in Chapter VII of our Charter.

"Secondly, the Security Council has recognized, in its resolutions concerning Spain, that this nation is not at present a menace to peace; for this reason, the Security Council has abstained from adopting the coercive measures which are within its exclusive jurisdiction.

If we approve the draft resolution under consideration, the General Assembly will not only have violated the Charter of the United Nations by performing a positive act of intervention in affairs which belong to the internal jurisdiction of Spain, but it will at the same time commit a second violation of our Charter when it encroaches upon the exclusive attributions or powers of the Security Council. ....

.... the collective pressure of the United Nations against Spain to compel it to change its government is an intervention in a matter which would constitute a violation of the stipulation contained in paragraph 7 of Article 2 of the Charter of the United Nations. ....

I place special emphasis on the fact that, as we have just noticed, the rupture of diplomatic relations, of which the first step is the withdrawal of ambassadors and ministers of the United Nations accredited to Madrid, is a coercive measure which can only be required of the United Nations by the Security Council."

This attempt to justify certain types of action by the General Assembly has not found favour among the Membership at large and has not been pursued by those States which advocated it during the first session. This is fortunate for the arguments on which this particular idea was based were essentially specious. It is true that intervention, as conceived in the nineteenth century applied to the arbitrary action of one State in trying to influence the actions of another. But how those Latin-American States concerned were able to jump from this premise to the conclusion that collective action by the United Nations cannot be intervention, is difficult, if not impossible, to appreciate. The Uruguayan delegate maintained, *supra*, that the principle of non-intervention could not apply to the basic organs of the United Nations community. The only possible riposte is: Why? This is the ostensible intention of the provisions of the Charter. This is the apparent reason why this provision was included in the Charter.

The logical consequence of this Latin-American approach to intervention is that the United Nations can do anything because it represents the collectivity of States. But it was precisely to exclude such collective action that Article 2(7) was inserted in the Charter. It was to prevent collective interference that this restriction was placed upon the powers of the United Nations.

This Latin-American approach is indeed a good example of the defective reasoning complained of elsewhere - the argument which maintains that as intervention is necessarily something arbitrary and dictatorial, recommendations cannot, *a priori*, constitute intervention. But cannot a recommendation be arbitrary? Does the fact that an action is taken by the collectivity of States make it any the less arbitrary where in fact it is dealing with matters it has no right to touch?

However, while this conclusion is the only possible one if regard is had to the positions which the various nations have adopted on this point, in principle, substantive practice in the General Assembly displays a curious tendency to adopt a somewhat milder approach. There has been evident, in the debates which have ensued on the merits of each item, even among nations which have objected to mere discussion of the domestic affairs of particular States, a tendency to tacitly accept such discussions and even to allow the passage of some kind of mild resolution thereon. The resolutions which they have been prepared to accept have usually amounted to no more than an expression of concern about a certain situation or perhaps an offer of good offices on the part of the United Nations. Nevertheless, no matter how mild these resolutions are, their acceptance by some States represents a considerable change of position, for, in principle, they had espoused the view that any resolution, irrespective of its character, amounted to intervention.

Corresponding to this modification there has been, among those States which had in principle adopted the technical view of intervention, a similar tendency to back away from their extreme position. All, of course, continued to maintain, in general, that discussion did not amount to intervention. But with regard to recommendations, they were much more cautious and at times refused to vote for certain resolutions, or parts of them, which they considered to constitute intervention.

There has, in fact, been evident among both sets of States a tendency to

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1. contd.

Action does not become permissible just because it is collective. To say so is to advocate the abolition of minority rights and to lay a minority of States, inevitably weak or vulnerable ones, open to massive intervention in affairs which all States consider as their own business. The jurisdiction of the United Nations cannot possibly be constructed on such a foundation.

examine the terms of a recommendation and decide on the basis of the substance thereof, whether or not it constitutes intervention. In very many instances, States have neither asserted that as the matter was domestic, no recommendation was legal, nor that as intervention was something dictatorial no recommendation could be intervention. There has been, on the contrary, a general tendency to adopt, in practice not in principle, a compromise definition of intervention which allows the General Assembly to at least discuss almost anything and to adopt some kind of mild resolution thereon. The tendency is ill-defined and not even continuous, as the following case histories will show. But the over-all trend is indisputable and is only masked by the fact that those States which have made contrary statements of principle do not in fact appear to be aware of what they are, in practice, doing.

## Chapter II

### The Relations of Members States with Franco Spain

#### 1. The First Session

##### (a) Background to the case.

The question of the relations of Members of the United Nations with Franco Spain was raised at the first, second, third and fifth sessions of the General Assembly, the question of intervention being discussed at the first, third and fifth sessions only.<sup>1</sup>

At the first part of the first plenary session, the General Assembly adopted<sup>2</sup> resolution 32(I) which recalled "that the San Francisco Conference adopted a resolution<sup>3</sup> according to which paragraph 2 of Article 4 ... of the ... Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as those regimes remain in power' ". The resolution also noted that at the Potsdam Conference, the Soviet Union, the United Kingdom and the United States agreed that they would not support a request for admission to the United Nations by the State of Spain, as long as that country was represented by the Franco regime. Finally, in endorsing these two statements of intention, the resolution recommended that "the Members of the United Nations should act in accordance with the letter and spirit of these statements in the conduct of their future relations with Spain".

During the discussions which led up to the adoption of this resolution, it

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1. At the sixth session, a special aspect of the Spanish question was discussed, i.e., the question whether a request to a State for a stay of execution of death sentences constituted intervention. This is dealt with separately; see *infra*, Chap. VIII, p. 248.

2. G.A., (I/1), Plen., 26th mtg., p. 361.

3. UNCIO, Vol. 6, pp. 127-136, Doc. 1167, I/10.

does not appear that the problems of domestic jurisdiction and intervention were raised.

At the second part of the first session, the subject of the relations with Franco Spain was again brought up. By a letter dated 31st October 1946<sup>1</sup> the representatives of five States - Belgium, Czechoslovakia, Denmark, Norway and Venezuela - requested that as the question of the attitude of the United Nations towards the regime in Spain was of great concern to the Members, an item concerning this matter be included in the agenda. It was included without debate.<sup>2</sup>

(b) General tenor of the ensuing discussion.<sup>3</sup>

During the consideration of this item, it was recalled that the Subcommittee established by the Security Council to examine the Spanish question<sup>4</sup> had found that although the continuance of the situation in Spain was likely to endanger the maintenance of international peace and security, it did not constitute an actual threat to the peace within the meaning of Chapter VII of the Charter. Hence it was contended that the question of the form and nature of the Spanish Government still fell essentially within the domestic jurisdiction of Spain and that therefore Article 2(7) prohibited the General Assembly from exerting any pressure on that country in order to bring about a change of regime therein. In particular, it was contended that the General Assembly was debarred from recommending that Member States should sever diplomatic relations

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1. G.A., (I/2), 1st Com., pp. 351-352, Annexes - annex 11(A/BUR/45).

2. G.A., (I/2), Plen., 46th mtg., p. 925; the above statement of background facts is taken from the Repertory, Vol. I, pp. 61-62.

3. Per Repertory, *ibid.*, p. 62.

4. S.C., 1st Yr., 1st Series, No. 2, 39th mtg., p. 245.



with Spain or even recall their ambassadors or ministers plenipotentiary because such a recommendation would constitute intervention both in the domestic affairs of Spain and of the States to which it was addressed.

These contentions were disputed by other States which adopted contrary points of view.

(c) Resolutions presented during the course of the debate in the First Committee.

In the course of the debate in the First Committee, a great variety of proposals was put forward. Resolutions or amendments thereto were proposed by: the Byelorussian S.S.R., Poland, the United States, Colombia, Norway, Belgium, Cuba, jointly by Mexico, Venezuela, Guatemala, Panama and Chile, and by Yugoslavia.

(1) The First Polish Draft Resolution.<sup>1</sup>

The General Assembly recalls that on 9 February 1946, without a dissenting vote, it condemned the Franco regime in Spain, reaffirmed its exclusion from membership in the United Nations in accordance with the decisions of San Francisco and Potsdam, and called upon the Member States to take this into account 'in conducting their future relations with Spain'.

In May and June, 1946, the Security Council conducted an investigation of the possible further action to be taken by the United Nations. The Sub-Committee charged with the investigation found unanimously:

"(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 protests, gave very substantial aid to the enemy Powers. First, for example, from 1941-1945 the Blue Infantry Division, the Spanish Legion of Volunteers and the Salvador 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's maintaining a large army in Spanish Morocco large numbers of allied troops were

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1. G.A., (I/2), 1st Com., Annexes, annex 11a, p. 352, Doc. A/C.1/24.

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 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."

The Sub-Committee also found that "the Spanish situation is one which has already led to international friction" and concluded that the existence and activities of the Franco regime constitutes a situation "likely to endanger the maintenance of international peace and security". Since that time the situation in Spain has deteriorated and continues, increasingly, to disturb and endanger international relations.

Therefore, the General Assembly recommends that each Member of the United Nations terminate, forthwith, diplomatic relations with the Franco regime.

The General Assembly expresses its deep sympathy to the Spanish people. The General Assembly hopes and expects that in consequence of this action the people of Spain will regain the freedom of which they were deprived with the aid and contrivance of Fascist Italy and Nazi Germany. The General Assembly is convinced that the day will come soon when it will be able to welcome a free Spain into the community of the United Nations.

(ii) The Second Polish Draft Resolution.<sup>1</sup>

Whereas the admission or participation of the Franco Government in Spain in organs and agencies established by or brought into relationship with the United Nations would contravene the purpose and intent of the resolution of 9 February, 1946,<sup>2</sup> excluding this government from membership in the United Nations;

The General Assembly recommends that the Franco Government be barred from membership and participation in any of the organs and agencies mentioned.

(iii) The Byelorussian Amendment to the Polish Draft Resolution. (i) supra.<sup>3</sup>

The General Assembly recommends that each Member of the United Nations terminate diplomatic and economic relations with Franco Spain, such action to include the suspension of communications by rail, sea, air, post and telegraph.

(iv) The United States Draft Resolution.<sup>4</sup>

The peoples of the United Nations, at San Francisco, Potsdam

1. *ibid*, annex 11b, p. 353, Doc. A/C.1/25.

2. Res. 32(I), supra, p. 19.

3. *ibid*, annex 11c, p. 354, Doc. A/C.1/35 and Corr. 1.

4. *ibid*, annex 11d, p. 354, Doc. A/C.1/100.

and London condemned the Franco regime in Spain and decided that, as long as that regime remains, Spain may not be admitted to the United Nations.

The peoples of the United Nations assure the Spanish people of their enduring sympathy and of the cordial welcome awaiting them when circumstances enable them to be admitted to the United Nations.

Therefore the General Assembly,

Convinced that the Franco Fascist Government of Spain, which was imposed by force upon the Spanish people with the aid of the Axis powers and which gave material assistance to the Axis powers in war, does not represent the Spanish people, and by its continued control of Spain is making impossible the participation of the Spanish people with the peoples of the United Nations in the international affairs;

Recommends that the Franco Government of Spain be debarred from membership in international agencies set up at the initiative of the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations or by these agencies, until a new and acceptable government is formed in Spain.

The General Assembly further,

Desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations,

Recognizing that it is for the Spanish people to settle the form of their government;

Places on record its profound conviction that in the interest of Spain and of world co-operation the people of Spain should give proof to the world that they have a government which derives its authority from the consent of the governed; and that to achieve that end General Franco should surrender the powers of Government to a provisional government broadly representative of the Spanish people, committed to respect freedom of speech, religion, and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will; and

Invites the Spanish people to establish the eligibility of Spain for admission to the United Nations.

(v) Colombian Amendment to the Draft Polish Resolution. (i) Supra.<sup>1</sup>

Whereas the General Assembly, at the first part of its first session held at London, adopted on 9 February 1946 the following resolution:

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1. *ibid*, annex 11e, p. 355, Doc. A/C.1/102.

"1. The General Assembly recalls that the San Francisco Conference adopted a resolution according to which paragraph 2 of Article 4 of Chapter II of the United Nations Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power'.

"2. The General Assembly recalls that at the Potsdam Conference the Governments of the United Kingdom, the United States of America and the Soviet Union stated that they would not support a request for admission to the United Nations of the present Spanish Government 'which having been founded with the support of the Axis Powers, in view of its origins, its nature, its record and its close association with the aggressor States, does not possess the necessary qualifications to justify its admission'.

"3. The General Assembly, in endorsing these two statements, recommends that the Members of the United Nations should act in accordance with the letter and the spirit of these statements in the conduct of their future relations with Spain."

Whereas a great many of the Members of the United Nations do not maintain diplomatic relations with Spain and various others are prepared to suspend such relations; and

Whereas it has been proposed to this General Assembly that it should recommend to all Members of the United Nations which have not yet done so that they should sever their diplomatic and economic relations with the Franco regime in Spain forthwith; and

Whereas it is a fact that the political and social conditions which gave rise to and justify the declarations made at San Francisco, Potsdam and London are still prevailing in Spain; and

Whereas, however, Article 4 of the Charter of the United Nations lays down that membership in the United Nations is open, not only to original members of the Organization, but also to all those which accept the obligations contained in the Charter and, in the judgement of the Organization, are able and willing to carry out these obligations; and

Whereas, in accordance with Article 55 of the Charter, the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of race, sex, language or religion,

Therefore, the General Assembly resolves:

1. To express its wish that the Government and people of Spain should seek and find a method of bringing into being, by peaceful means, within the shortest possible time and in accordance with the principles and purposes of the Charter of the United Nations, the new social and political conditions necessary to enable Spain to be admitted as a Member of the Organization;

2. To recommend to the Latin-American Republics that they should offer to the Government of Spain their good offices,

should the latter think them useful in order to achieve the purposes of this resolution;

3. To defer until the meeting of the next General Assembly the discussion and adoption of the resolution proposed by the delegation of Poland as well as the amendment proposed by the delegation of the Byelorussian S.S.R.

(vi) Belgian Amendment to the United States Draft Resolution.<sup>1</sup>

Add the following paragraph;

Recommends that if, within a reasonable time the political conditions enumerated above are not realized, the Security Council consider the adequate measures to be taken in order to remedy the situation, and

Recommends that all Members of the United Nations immediately recall from Madrid, by way of warning, their ambassadors and ministers pleipotentary, accredited there.

(vii) Amendment to the United States Draft Resolution submitted jointly by the delegations of Mexico, Venezuela, Guatemala, Panama and Chile.<sup>2</sup>

Replace the last two paragraphs of the United States resolution by the following:

"And inasmuch as the United Nations, by the actions they took in San Francisco, in Potsdam, in London, and even more recently in Lake Success, have in fact, collectively refused to maintain relations with the Franco regime, does hereby recommend that the Members of the United Nations take, individually, the same attitude they have taken collectively and refuse to maintain diplomatic relations with the present Spanish regime.

"The Assembly further recommends that the States Members of the Organisation report to the Secretary General and to the next Assembly what action they have taken in accordance with this recommendation."

(viii) Yugoslav Amendment to the United States Draft Resolution.<sup>3</sup>

1. In the second last paragraph replace the words:

"General Franco should surrender the powers of government to a provisional government" with the words "that there should be formed in Spain a provisional government".

2. At the end of the resolution add the following new paragraph:

Recommends to all Member States of the United Nations to sever diplomatic relations with the Government of General Franco.

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1. *ibid*, annex 11h, p. 357, Doc. A/C.1/107.

2. *ibid*, annex 11i p. 358, Doc. A/C.1/108.

3. *ibid*, annex 11j p. 358, Doc. A/C.1/105.

The amendments submitted by Cuba and Norway are not pertinent to the present discussion.<sup>1</sup>

(d) The Attitude of States towards these various proposals.

The proposals put forward in the First Committee had one thing in common - the desire to see the substitution of the Franco regime in Spain by another, more representative one. However, opinions varied as to the means which should be employed to achieve this end. This difference of opinion was due to differences in the opinion among the Members of the United Nations on the issue of domestic jurisdiction and also on what constitutes intervention.

Some States either expressly or by implication, contended that the matter was not domestic anyway and that the question of intervention did not therefore arise. Others do not appear to have considered the issues of domestic jurisdiction and intervention at all. Canada, for example, confined her remarks to the political expediency of the various measures proposed and did not make any statement on domestic jurisdiction or intervention.<sup>2</sup> Similarly, Luxembourg and Denmark supported the proposals of the United States, but without apparently considering the issues of intervention and domestic jurisdiction.<sup>3</sup>

However, the opinion of a considerable number of States did crystalize round the issue of intervention.<sup>4</sup>

The most extreme measure suggested was the rupture of relations, diplomatic and otherwise, with Franco Spain. No unnaturally States like Guatemala and Mexico, which expressed the view that no collective action by the United Nations

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1. Norway: *ibid*, annex 11f, p. 357, Doc. A/C.1/104.  
Cuba: *ibid*, annex 11g, p. 357, Doc. A/C.1/106.

2. G.A., (I/2), 1st Com., 37th mtg., pp. 244-245.

3. Luxembourg: *ibid*, 38th mtg., p. 262.  
Denmark: *ibid*, 39th mtg., p. 264.

could constitute intervention,<sup>1</sup> were of the opinion that this particular measure would not amount to intervention in the domestic affairs of Spain.

Speaking on behalf of Guatemala Mr. Saenz said that:<sup>2</sup>

The breaking of relations with Franco Spain was a passive measure and not intervention, but maintaining relations with Franco would amount to intervention in his favour. Franco was a product of fascism and the United Nations should break relations with his regime.

Giving the view of Mexico, Mr. de la Colina said that:<sup>3</sup>

... the breaking off of diplomatic relations was not an act of intervention. The recommendation to adopt such a measure was merely an invitation addressed to the Members to do individually what they had already decided to do collectively in San Francisco and London.

On the other hand several States opposed the collective severance of relations with Franco because they felt that such collective pressure on Spain to change its government would amount to an act of intervention in its domestic affairs. However, it is important to note that even those States were prepared to vote for some kind of recommendation, provided it did not amount to intervention. The delegations of several States indicated that though they were opposed to any resolution which they felt constituted intervention in the domestic affairs of Spain, they were not opposed to all recommendations on the subject, even though they did consider that the subject under discussion fell essentially within the domestic jurisdiction of Spain. The States taking this attitude included Nicaragua, the Philippines, the United States, Peru, the United Kingdom, Colombia, Ecuador, Costa Rica, El Salvador and China.

The Nicaraguan delegate pointed out that:<sup>4</sup>

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1. Supra, Chap. I, pp. 9-10.

2. G.A., (I/2), 1st Com., 35th mtg., p. 233; also, *ibid*, 39th mtg., p. 268.

3. *ibid*, 43rd mtg., p. 296.

4. *ibid*, 35th mtg., p. 234.

.....the General Assembly had already resolved that Spain should be barred from membership to the United Nations. Nicaragua would again support such a resolution, but would vote against measures which disregarded the principle of non-intervention and which had been one of the corner stones of the inter-American system since 1953. .... The United Nations should respect self-determination and non-intervention and for these reasons, the Nicaraguan delegation accepted the United States resolution.

Later in the same debate, the Nicaraguan delegate added that he:<sup>1</sup>

.....considered the United States proposal the most appropriate. The small nations had been glad to hear Mr. Connolly uphold the principle of non-intervention.

The representative of Panama, in analysing the United States proposal, had not given sufficient attention to Article 2 paragraph 7, of the Charter. The United Nations must not violate the principle of non-intervention, for the Franco regime was merely a potential threat to peace. ....

The delegate of the Philippines also opposed a recommendation of the collective rupture of relations with Spain. He said that:<sup>2</sup>

.....he could not vote for the Polish resolution or the Byelorussian amendment and thought that the United States resolution should be the basis of discussion. The right of intervention had been replaced by the principle of self-determination. When the Monroe Doctrine had lost its meaning, the small Latin-American Republics established the law of non-intervention in domestic affairs which was later accepted as a principle of international universal law and was recognized in Article 2, paragraph 7, of the Charter.

.....

The Philippine delegation agreed with the principles of the United States resolution which reaffirmed the principle of non-intervention and left the overthrow of the Franco regime to the Spanish people.

The Latin-American countries could not allow the principle of non-intervention, which was the only right of small weak countries, to be made void by a General Assembly resolution.

On behalf of Paraguay, Mr. Acosta said that:<sup>3</sup>

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1. *ibid*, 38th mtg., p. 262.

2. *ibid*, 35th mtg., p. 234-235.

3. *ibid*, 36th mtg., p. 235.



.... the Polish proposal was not satisfactory because the breaking of diplomatic relations was an attempt to modify an internal regime and was therefore an act of intervention. Furthermore a severance of diplomatic relations could be justified only where there was an act of aggression or a definite menace to peace. In regard to the Spanish situation, no such menace was found but only a potential danger.

The representative of Paraguay was more in agreement with the American proposal although he thought it contained some contradictions; it rested on the principle of non-intervention but, at the same time, suggested the formation of a provisional government to which General Franco should surrender his powers. He was also more in agreement with the Colombian proposal which, he believed, was more in keeping with the principles of the Charter. ....

He declared himself in favour of a solution which would permit the Spanish people to find its place among the United Nations.

In commending the American resolution to the Committee, the United States representative, Mr. Connally said that:<sup>1</sup>

.....Breaking diplomatic relations and imposing economic sanctions would only result in making worse the situation of the Spanish people and increasing in Spain a political and economic chaos conducive to civil strife. This situation would provoke international complications, since both the opposing factions in Spain would be likely to receive the support of different Members of the United Nations. This was not the proper time to take coercive measures against Spain.....

The situation which led the Security Council to defeat the Polish proposal to sever diplomatic relations with Spain had not changed. The Franco regime was not a direct threat to the maintenance of peace.

Mr. Connally reiterated the readiness of his Government to take steps against the Franco regime when it was found to be a threat to international peace.....

The representative of the United States concluded by stressing that the basis of the foreign policy of his Government was the principle of non-intervention in the internal affairs of other countries, recalling that the policy of non-intervention was a principle laid down in Article 2, paragraph 7, of the Charter. The only course of action which would be prudent and wise, in the present state of affairs, would be to remind the Spanish people of

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1. *ibid*, pp. 239-240.

the reasons why they were not eligible for membership in the United Nations and to suggest to them the conditions they should create to regain their place among the United Nations.

Later on in the same debate, Mr. Connally, objecting to the terms of the Polish draft resolution and the Byelorussian amendment thereto, said that:<sup>1</sup>

Unlike the Polish resolution and the Byelorussian S.S.R. amendment, the United States resolution made a direct appeal to the Spanish people, who by an aroused public opinion could bring pressure to bear on the leaders to bring about a change of government. Breaking economic relations would be intervening with the force of hunger and, by disrupting normal commercial relations and bringing hardships to the people of Spain, would strengthen the Franco regime.

Similar opposition to coercive measures was voiced by the delegation of Peru, on behalf of which, Mr. de Lavallo said that:<sup>2</sup>

.... Peru had adhered to the principle of non-intervention throughout its history and thought it should be carefully defended without, however, prejudicing collective action for the maintenance of peace and security. The United Nations could take coercive measures only when the Security Council had determined the existence of a threat to the peace, a breach of the peace, or an act of aggression under Article 39. Since the Security Council's investigation had proved that Spain was only a potential threat to the peace, which did not allow measures to be taken under Articles 41 and 42, the situation must be considered internal. .....

The maintenance of diplomatic relations did not mean the approval of the Franco regime and Peru adhered to the three declarations prohibiting the admission of Franco Spain into the United Nations. This exclusion reaffirmed the principles of the Charter. He favoured a recommendation which would tend to re-establish a peaceful and democratic situation in Spain.

The United Kingdom adopted a similar position. Non only did she disapprove of the adoption of coercive measures on the grounds that it would be politically unwise, but maintained that to do so would be to intervene in the domestic affairs of Spain. Yet, at the same time, the United Kingdom was able to give its support to the American draft resolution. Sir Hartley Shawcross said that the

1. *ibid*, 39th mtg., p. 268.

2. *ibid*, 36th mtg., p. 242; emphasis added.

United Kingdom:<sup>1</sup>

.....approved the United States resolution as the means most likely to rid Spain of Franco and return the Spanish people to the community of nations with a truly democratic regime. He emphasized that his delegation's belief that the United Nations ought not to intervene more actively was not because the United Kingdom had any delusions about the Franco Government or any lack of sympathy for the Spanish people which suffered under its yoke. The Spanish people should be left in no doubt as to the contempt with which their present government was regarded, or as to the resolute refusal of the rest of the world to admit them into the community of nations while that government remained in power. The United States resolution contained that message.

However, his Government opposed any action which might precipitate the catastrophe of a Spanish civil war, which a resolution such as that submitted by the Yugoslav delegation appeared to invite. ....

Even if diplomatic or economic sanctions were wise, he declared, at the present stage of development of the United Nations, interference in the domestic affairs of other Governments would set a very grave precedent. No matter was more obviously the exclusive concern of the people of a State than the form of its own government. Since the Security Council had expressly refrained from declaring that the Spanish question constituted a threat to the peace, his Government maintained it to be a domestic matter..... he felt that to interfere and make an exception, in what was alleged to be a 'very special' case, would only lead to the temptation to intervene in other, no doubt 'very special' cases. ....

Although his Government had previously questioned the usefulness of a resolution which would exclude Spain from membership on specialized agencies, his delegation would support both parts of the United States resolution.

Colombia, in commending its own draft resolution to the First Committee, also expressed her disapproval of any recommendation which would constitute intervention in the domestic affairs of Spain. Speaking on Colombia's behalf, Mr. Lopez said that:<sup>2</sup>

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1. *ibid*, 37th mtg., p. 247; emphasis added.

2. *ibid*, p. 249-250; emphasis added.

.... although he shared the interests of every one of the Members of the United Nations in brining about a change in the social and political situation of Spain, he was definitely not in favour of any intervention. The Polish proposal sought to throw Franco out of the government of Spain. As for the American draft resolution, some interpreted it as an invitation to do the same, whereas others viewed it as a stimulant to civil strife in Spain. Although Mr. Connally said this was not his intention, it was hard to understand how it was possible to throw Franco out of office without his consent or without bringing about civil strife in Spain. The Colombian proposal attempted to reconcile the purposes of the three motions before the Committee but differed from them as to the methods to be followed.....

The Colombian proposal approached the Spanish question from another angle. Instead of recommending coercive measures or intervention, it laid emphasis on co-operation between the Spanish people and its present government to bring about a change in the existing social and political system.

Ecuador also stated her opposition to any proposal which implied intervention, but did not elaborate on which of the proposals before *the* Committee she felt fell into that category.<sup>1</sup> Costa Rica, also opposing any intervention in the domestic affairs of Spain, expressly objected to the Polish resolution. Mr. Fournier said that.<sup>2</sup>

.....The Polish resolution, which sought to put foreign pressure on Spain to change its form of government, was clearly an intervention. It would be wrong both legally and historically to intervene on the grounds that the Franco regime had been established with the help of Hitler and Mussolini.

.....He would not vote for any proposal providing for intervention.

Mr. Castro of El Salvador added his country's voice to those who objected to the coercive measures foreseen in the Polish resolution and the Byelorussian amendment thereto. He said that:<sup>3</sup>

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1. *ibid*, p. 251.

2. *ibid*, p. 252.

3. *ibid*, p. 253.

.....The Polish and Byelorussian proposals would have the effect of isolating the Spanish people with the object of overthrowing the Spanish Government and was clearly intervention. Since the defeat of Germany and Italy, the Spanish people had received no outside aid and could decide the question of their government for themselves. Under Article 2, paragraph 7, of the Charter, coercive measures, such as the breaking of diplomatic relations, could be taken only by the Security Council and the Council had established that the Franco regime was not a threat to the peace.

Analysing the various proposals which had been put forward in the First Committee in the course of the debate, Mr. Wellington Koo of China divided them into three categories and said that:<sup>1</sup>

.... The first were those favouring enforcement action in some form and included the Polish resolution and amendments of the Byelorussian S.S.R., Belgium, Norway and Yugoslavia. The Security Council had determined that the Franco regime was a potential rather than an imminent threat to the peace and therefore such drastic action as the application of Article 41 was not called for. He could not support these proposals.

The second category was the United States resolution. Mr. Koo thought that the proposal to bar Franco Spain from the United Nations agencies was an appropriate step since this resolution also safeguarded the principles of non-intervention and self-determination. He would support the United States proposal which attempted to meet the Polish view half way.

The third category was the Colombian resolution which was in substance collective mediation. ....

It is inherent in this analysis that China too was prepared to support a recommendation which did not go as far as to intervene in the domestic affairs of Spain, but would oppose one which, in her opinion, did do so.

It is clear from the statements quoted above that those delegations were unhappy about the possible outcome of the debate on the Spanish question. On the one hand, they wished to see the Franco regime replaced by one which paid some attention to democratic principles. On the other, each of the States

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1. *ibid.*, 39th mtg., pp. 264-265.

dealt with, either expressly or by implication, recognized that the question of the form of the government of any State is a matter to be dealt with by the people of that State and therefore a matter of domestic jurisdiction which, by the terms of Article 2(7) of the Charter, is immune from United Nations intervention. In addition, it was recognized by some of them that the exception provided for in Article 2(7) did not apply in this case because the Security Council Sub-Committee<sup>1</sup> had found that the Franco regime did not constitute a direct threat to peace within the meaning of Chapter VII of the Charter.

Nevertheless, while all those States made plain their intention not to be a party to any intervention in the internal affairs of Spain, such as, in their opinion, would have been the case if they had voted for resolutions of the type proposed by Poland, equally they indicated that they were not averse to all recommendations. The fact that they considered the question of the form of the government of a State to be an internal matter did not induce them to maintain as a consequence that any and all recommendations on the subject would constitute intervention in the affairs of Spain. On the contrary, they all indicated their willingness to vote for some kind of resolution dealing with the matter.

This is a most important development in the interpretation of the Charter provisions relating to intervention, for it has already been seen that, at a later stage in United Nations practice, States like the United Kingdom have maintained that where a matter is essentially domestic, it cannot even be discussed or included in the agenda of the General Assembly. However, this was not the approach adopted at this early stage. At this early stage in the practice of the United Nations the approach adopted towards this question was

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1. Supra, p.20.

that whereas some recommendations addressed to particular States regarding their domestic affairs, or which, though addressed to States in general, also treat with the domestic affairs of a particular State, constitute intervention, not all such recommendations necessarily do so. It is evident that an attempt was being made here to distinguish between different types of recommendations and to classify them as intervention according to their terms and not dismiss them all, just because the matter dealt with was domestic to a particular State.<sup>1</sup>

Confronted with these different proposals and the divergent opinions of the various delegations on both their suitability and legality, it was decided at the 39th meeting of the First Committee to refer the matter to a Sub-Committee, consisting of the authors of resolutions or amendments thereto, plus the permanent members of the Security Council, which was instructed to seek any common ground among the many resolutions and amendments thereto and to produce an original resolution which might be unanimously acceptable.<sup>2</sup> The result of the labour of this committee was the following resolution:<sup>3</sup>

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1. This conclusion is not, however, without some qualification, for it appears that the opposition of certain States to the coercive measures suggested by Poland and the Byelorussian S.S.R., was to a certain extent due to the fact that such measures could be taken only by the Security Council, under the powers given to that body in Chapter VII of the Charter; see, e.g. the statements of El Salvador, supra, p. 32 and of Peru supra, p. 30. However, the other States which adopted this approach to the question of intervention did not voice this objection to the Polish and Byelorussian proposals. Their objections were of a more general nature, and were related to the powers of the United Nations as an entity, not to the internal constitutional limitations on the powers of the respective organs thereof. These States maintained that as the question of what kind of government ruled Spain was within the domestic jurisdiction of that country, the United Nations could not intervene, and therefore certain kinds of recommendations were ultra vires altogether. The opinion of those other States was not, it appears, conditioned by any consideration of the internal division of power within the United Nations, but rather by what any United Nations organ could do in the circumstances.

2. *ibid*, 39th mtg., p. 270

3. *ibid*, 43rd mtg., p. 304. When adopted, this resolution was numbered Res. 39(I).

The peoples of the United Nations, at San Francisco, Potsdam and London, condemned the Franco regime in Spain and decided that as long as that regime remains, Spain may not be admitted to the United Nations.

The General Assembly in its resolution of 9 February 1946, recommended that the Members of the United Nations should act in accordance with the letter and the spirit of the declarations of San Francisco and Potsdam.

The peoples of the United Nations assure the Spanish people of their enduring sympathy and of the cordial welcome awaiting them when circumstances enable them to be admitted to the United Nations.

The General Assembly recalls that in May and June 1946, the Security Council conducted an investigation of the possible further action to be taken by the United Nations. The Subcommittee of the Security Council charged with the investigation found unanimously:

(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 protests, 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 Salvador 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 result of Spain maintaining a large army in Spanish Morocco, large numbers of Allied troops were immobilized in North Africa;

(c) Incontrovertible documentary evidence established 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.

The General Assembly, convinced that the Franco Fascist government of Spain which was imposed by force upon the Spanish people with the aid of the Axis Powers and which gave material assistance to the Axis Powers in the war, does not represent the Spanish people, and by its continued control of Spain is making impossible the participation of the Spanish people with the peoples of the United Nations in international affairs:

Recommends that the Franco Government of Spain be debarred from membership in international agencies established by, or brought into relationship with, the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations or by these agencies, until a new and acceptable government is formed in Spain.



The General Assembly further, desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations:

Recommends that if within a reasonable time there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly, and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider adequate measures to be taken in order to remedy the situation and,

Recommends that all Members of the United Nations immediately recall from Madrid, their ambassadors and ministers plenipotentiary, accredited there.

The Assembly further recommends that the States Members of the Organization report to the Secretary-General and to the next Assembly, what action they have taken in accordance with this recommendation.

This compromise resolution was adopted by the whole committee by 25 votes to 4, with 20 abstentions.<sup>1</sup>

(e) The subsequent attitude of States - the First Plenary Session.

In the subsequent debates on this matter at the first session, States which addressed themselves to the question of intervention were concerned not so much with the question of whether any discussion of or recommendation concerning the nature of the Spanish Government constituted intervention in the domestic affairs of that State but rather with what kind of recommendation was acceptable. No great emphasis was placed on the argument that as the matter was domestic, the United Nations was not competent to deal with it. There seems, on the contrary, to have been an acceptance, among States which did consider that the matter fell

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1. ibid, p. 504. In Favour: Australia, Belgium, Brazil, Byelorussian S.S.R., Chile, Czechoslovakia, Denmark, Ethiopia, France, Guatemala, India, Luxembourg, Mexico, New Zealand, Norway, Panama, Poland, Sweden, Ukrainian S.S.R., United Kingdom, U.S.S.R., Venezuela, Yugoslavia.  
Against: Colombia, Costa Rica, Dominican Republic, El Salvador.  
Abstentions: Afghanistan, Canada, China, Cuba, Egypt, Greece, Honduras, Iceland, Iraq, Lebanon, Netherlands, Nicaragua, Paraguay, Peru, Philippine Republic, Saudi-Arabia, Syria, Turkey, Union of South Africa, United States of America.

essentially within Spain's domestic jurisdiction, of the fact that, nevertheless, some kind of recommendation was within the competence of the General Assembly.

When the statements and voting patterns of States which took part in this debate are examined and compared with the rigid attitudes on the question of intervention adopted at later stages in the practice of the United Nations, it is apparent that at this early stage in the life of the United Nations an entirely different approach to the question of intervention was being practiced. At this early stage, there was present a reasonably clear tendency to differentiate between types of recommendations. States dealing with the question of intervention in this case declined to oppose all recommendations just because the matter was considered to fall essentially within the domestic jurisdiction of Spain. On the contrary, States which did oppose proposed resolutions did so, not because they were addressed to Spain, or though addressed to States in general dealt with the internal affairs of Spain, but because, in their opinion, those resolutions recommended measures which sought directly or indirectly to coerce the people of Spain into changing their form of government and hence constituted intervention in an internal Spanish question. The question of intervention was decided on the basis of an examination of the terms of the various proposals, on an examination of what those resolutions were trying to do rather than on the basis of any a priori reasoning that any recommendation constituted intervention. No attempt was made to give a rational basis for this distinction. Theoretical questions were, in the main, avoided. But in the light of the statements made in the course of the debates, it is reasonable to impute to those States a desire to come to some compromise definition of intervention which would allow the General Assembly a reasonable amount of freedom of action even where the matter concerned was

essentially within the domestic jurisdiction of States.

While, however, the majority of States dealing with the question of intervention did appear, by their actions, to approve of this approach to the problem, no consensus emerged as to what type of recommendation the General Assembly was able to adopt. This lack of unanimity is evident from the attitudes adopted towards the compromise resolution recommended by the First Committee.

The resolution recommended to the General Assembly by the First Committee was adopted by the plenary session by 54 votes to 6, with 13 abstentions.<sup>1</sup>

As in the debates in the First Committee, in the plenary session, the majority of States contended that the matter was not domestic, and hence the question of intervention for them, did not arise. However, a few did expound their theories of intervention, and how far this allowed the United Nations, in general, and the General Assembly, in particular, to act where the matter was within the domestic jurisdiction of a State. Unfortunately, however, the number of States which held that the proposed resolution did constitute intervention is almost equally matched by those which held that it did not. The States which, in the first plenary debate, held that the proposed resolution on the relations of Members of the United Nations with Franco Spain did

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1. G.A., (I/2), Plen, 59th mtg., p. 1222. The details of voting were as follows:  
In favour: Australia, Belgium, Bolivia, Brazil, Byelorussian S.S.R., Chile, China, Czechoslovakia, Denmark, Ethiopia, France, Guatemala, Haiti, Iceland, India, Iran, Luxembourg, Liberia, Mexico, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Sweden, Ukrainian S.S.R., United Kingdom, United States, Uruguay, U.S.S.R., Venezuela, Yugoslavia.  
Against: Argentina, Costa Rica, Dominican Republic, Ecuador, El Salvador, Peru.  
Abstentions: Afghanistan, Canada, Colombia, Cuba, Egypt, Greece, Honduras, Lebanon, Netherlands, Saudi-Arabia, Syria, Turkey, Union of South Africa.  
 See G.A., (I/2), Plen. 59th mtg., p. 1222.

constitute intervention were: Cuba, El Salvador, Costa Rica, Ecuador, Argentina, and Peru. Those which, either expressly or by implication, held that it did not were: Chile, France, the United Kingdom, Nicaragua, Paraguay, and the Philippines.<sup>1</sup>

Because of this even split of opinion, it cannot be said with any certainty how far the General Assembly can act where the matter falls within the domestic jurisdiction of a State. However, one thing does emerge from these statements. Almost all of the States which dealt with this question of intervention concentrated their attention on the element of coercion to be found in the proposed resolution. States which objected to it did so because, in their opinion, it represented an attempt to coerce, either directly or indirectly, the Spanish people to overthrow their Government. On the other hand, States which supported this resolution and dealt with the question of intervention seemed, on the contrary, to be of the opinion that as no element of overt coercion was present, it was within the competence of the General Assembly.

The acceptability of this resolution seemed, for those States which were concerned to avoid intervention in Spain's domestic affairs, to lie in the absence of the element of coercion. Different States held varying views on what constituted coercion, and whether or not the fact that it was indirect or disguised made it permissible. Nevertheless, the fact remains that it was the presence of this element of coercion which was the criterion of acceptability, and not any a priori reason such as the illegality of all recommendations.

(i) States which opposed the resolution because in their view it constituted intervention in Spain's domestic affairs.

Of the States which voted against the resolution in the plenary session,

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1. In this enumeration, no account is taken of States which maintain that no recommendation constitutes intervention, or that no collective action can constitute intervention.

Costa Rica, Ecuador, El Salvador and Peru had indicated their willingness in committee to vote for any resolution which did not amount to intervention in the domestic affairs of Spain. However, the resolution recommended to the General Assembly by the First Committee did, in their opinion, do so and in this they were joined by Cuba and Argentina.

As already noted, Cuba and El Salvador opposed the collective withdrawal of ambassadors and ministers plenipotentiary from Madrid because such a collective act would, in their opinion, constitute intervention in Spain's domestic affairs.<sup>1</sup>

In the debate in the First Committee, the Costa Rican delegation had indicated its opposition to any proposal which amounted to intervention in Spain's domestic affairs. However, apart from indicating disapproval, on those grounds, of the Polish resolution to sever diplomatic relations and the Byelorussian amendment thereto, Costa Rica did not indicate how far the General Assembly would still be allowed to act on the matter. Her statement in the plenary session again does not indicate what the General Assembly could do, positively, but it does indicate her opposition to measures which sought to coerce a State regarding its domestic affairs. Voicing his country's disapproval, Mr. de Paula Gutierrez said:<sup>2</sup>

The delegation of Costa Rica considers it appropriate and necessary, now that we have reached the final stage of the Spanish question, to set forth its reasons for voting against all the proposals submitted to the Assembly. ....

We agree with neither the form nor the substance of the proposal under discussion. The purpose of this proposal, according to the categorical statements of its supporters, is to bring about positive action to cause a change of government in another State. Costa Rica cannot agree to any sort of

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1. Cuba, see supra, Chap. I, p. 14 ; El Salvador, see supra, Chap. I, p. 15.

2. G.A., (I/2), Plen., 58th mtg., pp. 1182-1185; Emphasis added.

intervention, either open or disguised, against any government, whatever that government may be. It takes this view as a matter of doctrine and in order not to infringe concrete principles laid down in the United Nations Charter, which in Article 2, paragraph 7, prescribes non-intervention 'in matters which are essentially within the domestic jurisdiction of any State'. It could never be claimed that the creation and form of a government were not matters within the domestic jurisdiction of a State.

Having reviewed the action which the United Nations had already taken on the subject, the declarations of San Francisco, Potsdam and General Assembly resolution 32(I), Mr. de Paula Gutierrez continued:

We believe, therefore, that, as regards recommendations and declarations, there is no more to be done and that the ground is fully covered by those already adopted. It seems quite clear that the United Nations will not accept Spain so long as the country is governed by the present regime. The recommendations and declarations already mentioned suffice as notification of this fact to the Spanish people. The delegation of Costa Rica therefore considers that there is no point in repeating now what has already been said on several occasions. ....

The delegation of Costa Rica maintains, moreover, that the resolution adopted at San Francisco cannot compel any government to approve the present proposal. To declare that a State shall not be admitted to the United Nations is not the same thing as initiating measures to compel its government to abandon power or inciting its people to overthrow their government. That is manifest intervention. The admission or non-admission of a State to the United Nations is a matter for the free decision of each Member. Each country may vote without giving a reason, without having to explain its vote, and it may even happen that a nation fulfilling all the conditions required by the Charter will not obtain the number of votes necessary for membership owing to the pretexts or sympathies of the voting Governments or their delegations. The present case is quite different; it is not a question of accepting a government, or of not accepting it, but of coercing a people to change its government, even though it may be made to appear that this is being done with the desire to enable the country to become a Member of the United Nations.

On behalf of Ecuador, Mr. Illescas said:<sup>1</sup>

I repeat, General Franco's position does not interest us, even though, according to the Security Council, he does not at

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1. *ibid*, p. 1197.

present constitute a real menace to the peace of Europe. But the action which it is proposed that we should take against General Franco's regime would endanger the existence and impair the efficiency of the principles of non-intervention and self-determination in internal matters for each nation, and in our view those principles are fundamental and cannot be changed or altered if we really desire to form a society of nations united by justice, free from fear, from outside pressure, from material and moral poverty, and, above all, from despotism. ....

Likewise, Argentina and Peru maintained that the measures proposed constituted intervention in Spain's internal affairs.<sup>1</sup> Amplifying Peru's objections to the proposed recommendation, Mr. de Lavalle said:<sup>2</sup>

.....Peru by tradition and by political and legal conviction, is a determined supporter of the principle of non-intervention, one of the fundamental conceptions of American law. Peru believes that that principle must be zealously guarded, but without prejudice to cases of collective action envisaged in the United Nations Charter as a safeguard against any threat or danger to peace.

The principle of non-intervention is the supreme safeguard of the small States, and a legal instrument like the United Nations Charter cannot be allowed to become a threat to their sovereignty and independence. The formula proposed by the Committee thus strikes at one of the most solid foundations of the Inter-American system which is based on non-intervention agreements; that is why the Peruvian delegation votes against any proposal which directly or implicitly involves any form of intervention.

.....

As the Security Council has not decided that any actual threat to world peace exists, the measures proposed in the resolution do not conform to Article 39 of the Charter, and the Government of Peru considers that the withdrawal of ambassadors and ministers constitutes a collective measure not provided for in Article 41 of the Charter. Owing to the same lack of legal justification, the Peruvian delegation voted against the proposal for economic sanctions against Spain.

Thus, while these States, in principle, were prepared to accept some kind of recommendation on the Spanish question, the fact that the one proposed sought to exert pressure, directly or indirectly on the Spanish people to change their form

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1. Argentina, see *ibid.*, 59th mtg., p. 1206-1208; Peru, see *ibid.*, pp. 1216-1217.

2. *ibid.*, pp. 1216-1217.

of government classified it, in their opinion, as intervention in Spain's domestic affairs.

(ii) States which supported this resolution, contending that it did not amount to intervention.

States which supported this resolution and which dealt with the question of intervention, contrary to those dealt with in the preceding section, maintained that this resolution did not constitute intervention in Spain's domestic affairs. Their reason for so doing appears to have been that it did not seek to compel the people of Spain, directly or overtly, to change their form of Government.

The Chilean delegation did not make it clear whether, in that country's opinion, the matter fell essentially within the domestic jurisdiction of Spain or not. However, the Chilean delegate, Mr. Nieto del Rio, maintained that in any case the proposed measure did not amount to intervention. He said:<sup>1</sup>

.... These measures are not 'sanctions' within the technical meaning of the Charter, but a political attitude imposed by logic and good morality, for the present regime in Spain is a reminder of episodes that were always considered an obstacle to international harmony.

France, more by implication than by express statement, maintained that the matter did not fall essentially within Spain's domestic jurisdiction. Nevertheless, she also supported the thesis that, in any case, the measures proposed did not amount to intervention. The French delegate, Mr. Jouhaux said:<sup>2</sup>

I have seen men, bowed down with the weight of their legal learning, come to this rostrum, and affirm that the severance of diplomatic relations would constitute an intervention in Spain's internal affairs. Yet these same men used to declare elsewhere that the rupture of diplomatic relations was an act of national sovereignty on the part of each State, and that a decision taken by one government to sever diplomatic relations with another should in no sense

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1. G.A., (I/2), Plen., 57th mtg., p. 1168.

2. *ibid*, 58th mtg., pp. 1192-1193.



be considered intervention. How can they explain on legal grounds that an action would no longer be an exercise of national sovereignty if it were the application of a recommendation by the United Nations Assembly. There is no denying that it would still be action by each government and consequently an act of national sovereignty.

The United Nations resolution, as has been pointed out, is not a compulsory one. It is nothing more than a request to each government; governments remain free to do as they wish. The severance of diplomatic relations can not, therefore, be considered an intervention on the ground that it took place at the request of the United Nations General Assembly. I am no legal expert, but I do not think that any legal expert could maintain such a view. ....

This statement by France has important implications. Although she infers that the matter is not domestic, she nevertheless adds that in any case the recommendation proposed does not amount to intervention. This is, in reality, the same as saying that even if the matter were within Spain's domestic jurisdiction, a recommendation to all Members to withdraw their ambassadors from Madrid in an effort to induce a change of government within that country does not amount to intervention.

The reason given by France for this view should be noted. The recommendation, she reminded Members, was not compulsory. It was only a request to States which remained free to do as they pleased. It seems to be implied that because of this, no element of compulsion is exerted on Spain to change its form of government. It will however be remembered that elsewhere France opposed any recommendation which dealt with matters which were within her domestic jurisdiction.

Thus, by this statement, France seems to advocate an approach to the question of intervention different from that which she adopted elsewhere. She seems to indicate that whatever the domestic nature of a matter, not all recommendations are barred as a consequence. Secondly, it seems to be France's opinion here that recommendations which are free from the element of compulsion are within the competence of the General Assembly, even where the item is within

the domestic jurisdiction of a particular State.

Of the States which supported this resolution, the United Kingdom, Nicaragua, Paraguay and the Philippines had all indicated in committee, either expressly or by implication, that the matter of the change of government in Spain was within the domestic jurisdiction of that country. On this basis they opposed any resolution which seemed to them to exert overt pressure on that country to change its government. However, it seems that, in their opinion, this defect did not apply to the recommendation under discussion in the plenary session.

The United Kingdom, despite the fact that in the First Committee she had expressly declared the matter under discussion to be within Spain's domestic jurisdiction, found no difficulty in supporting the proposal to withdraw ambassadors and ministers plenipotentiary from Madrid. This fact is all the more interesting because of the attitude which the United Kingdom took to one of the paragraphs in this resolution. Mr. Bottomley said that his Government objected to the following passage in the proposed recommendation:<sup>1</sup>

Recommends that, if within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly, and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation.

Of this paragraph of the recommendation, Mr. Bottomley said:<sup>2</sup>

In the view of my Government it is not for the General Assembly, but for the Security Council itself to decide whether to take action in this matter in the light of its own consideration of the question. Moreover, the paragraph as it stands implies that the existence of a government in Spain which does not completely fulfil the conditions laid down in

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1. *ibid.*, 59th mtg., pp. 1198-1199.

2. *ibid.*

this paragraph is in itself a ground for action by the Council to remedy the situation. This is contrary to the Charter, which limits action by the Council to cases in which it has determined that there is a danger to the maintenance of international peace and security.

Because of these objections, Great Britain requested a vote on the resolution by paragraphs. However, the adoption of this paragraph did not prevent her from supporting the resolution in its entirety.

The fact that the United Kingdom was able to support one type of General Assembly action, and this where the matter was, in her opinion, within the domestic jurisdiction of Spain, while at the same time opposing another, albeit on internal constitutional grounds, highlights the distinction elaborated above. At this early stage in the practice of the United Nations, the United Kingdom, which later on adopted a very rigid attitude towards the question of intervention, determined her attitude on the question of intervention, not so much on the basis of the form of the proposed action, i.e., a recommendation which was addressed to a particular State or which dealt with its affairs, but rather by the content of that recommendation. Furthermore, as was the case with France, she seemed to view with favour recommendations which did not seek to apply overt pressure on a State regarding its domestic affairs. For, whereas she viewed with disfavour the imposition of any 'sanctions' on Spain in order to realize a change of regime in that country, her support for this recommendation would seem to indicate that the measures foreseen did not fall into that category.

The Nicaraguan delegate reviewed the position his country had taken in the debate in the First Committee, and recalled that whereas his delegation had opposed the imposition of the coercive measures proposed by Poland, it had supported the United States draft resolution because it did not involve a contravention of the principle of non-intervention. Recalling the opinions of several other States on this question, he declared his country's support for the draft

resolution before the General Assembly. He said:<sup>1</sup>

In the presence of such legal opinions as to the interpretation of the principle of non-intervention, our legitimate fears have been set at rest. Thus, in our sincere desire to defend this principle against any violation, we are naturally glad to note that if jurists of standing from various parts of the world maintain that the collective severance of diplomatic relations with a specific country is not intervention, still less can the mere withdrawal of heads of missions accredited to a country be taken to mean intervention.

I wish therefore to state, on behalf of my Government, that the Nicaraguan delegation will vote in favour of the resolution approved by the Sub-Committee and by the First Committee, in the form now before us, on the firm understanding that the withdrawal of heads of missions from Spain does not in any way violate the sacred principle of 'non-intervention', and that in accepting that withdrawal, we thus give Spain the opportunity to obtain a truly representative government, so that without delay she may take her place among us, the representatives of world sovereignty as constituted by the free peoples of the world.

In the opinion of Paraguay, the Assembly was only adopting a 'preventive measure for the sake of security and peace' and as such was not guilty of intervention as prohibited by the Charter.<sup>2</sup>

Similarly, the Philippines was prepared to support this resolution, though in Committee, she had expressed her disapproval of any attempt to intervene in Spain's internal affairs. Mr. Romulo said:<sup>3</sup>

Although we may have differed in the Committee on the specific course of action we should take on the Franco Government, we cannot at this critical moment vacillate any longer. The resolution before us represents a compromise arrived at after long debate between opinions and proposals of extreme diversity; between a complete hands-off policy, on the one hand and, on the other, a policy of violent intervention through the severance of diplomatic relations with, and the imposition of sanctions on, Franco Spain.

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1. *ibid.*, p. 1202.

2. *ibid.*, p. 1204.

3. *ibid.*, p. 1209.

(iii) Conclusions.

From the statements of the twelve countries considered in the above section, no sweeping conclusions can be drawn. Six of them appeared to oppose any form of pressure on a State regarding the form of its government, and this whether the pressure was overt or disguised. On the other hand, six appeared only to oppose measures which applied pressure overtly.

However, it is important to note that of these States all, with the exception of Chile and France, had, on the one hand indicated their support for some resolution, while on the other, opposing others on the grounds that they constituted intervention. Thus, while it may not be possible, on the basis of this debate, to say what type of recommendation the General Assembly is competent to adopt where a matter falls within the domestic jurisdiction of a particular State, it is plain that those States which devoted some thought to the problem of intervention did not conclude that all discussions of or recommendations concerning domestic matters were incompetent because of Article 2(7). Some compromise was clearly envisaged.<sup>1</sup>

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1. While not strictly relevant to the subject presently under discussion, the speech of the Colombian delegate regarding this resolution is of great interest for it sets out exactly the problems which had to be faced by States which voted for it. His conclusions, however, are not strictly accurate for he is of the opinion that by adopting this resolution, the General Assembly had concluded that indirect or negative measures were not intervention. This conclusion would only have been correct had the majority of States which voted for the resolution considered that the item fell within Spain's domestic jurisdiction, which they did not. Nevertheless, his speech is worthy of study. He said:

[G.A., (I/2), Plen., 57th mtg., pp. 1171-1175]

....we are faced with a new contradiction. The great majority of this Assembly is not and cannot be in favour of intervention by the United Nations in the internal affairs of any country, whether a Member of this Organization or not. ....

In order not to give the impression that we are openly departing from the letter and spirit of the Charter, we have agreed, at any rate in principle, that indirect or negative measures are not

interventions, and these include action which the United Nations may take on the recommendation of the General Assembly, even though it may involve external pressure as strong as the threat to sever diplomatic relations or the application of such measures as might be ordered by the Security Council to give force and effect to the wishes of the General Assembly.

But it has been stated in this very Assembly that the United Nations have agreed to limitations upon their sovereignty which not only prevent them from legislating in opposition to the principles of the Charter, but have already given rise to the serious problem of whether, and, if so, when they should take steps to bring their own legislation into line with those principles.

Only yesterday we passed a resolution stating that this Assembly agrees that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the two governments, and the relevant principles of the Charter. ....

With equal justification, for the very same reasons and on the same principles, it might be argued that the United Nations should recommend that all Members alter their legislation and their administrative organization so as to put an end to all racial discrimination. Sooner or later, we shall have to decide whether we intend to continue along the road on which we have set out or whether, as the Colombian delegation believes is necessary, we should plan methods of procedure, fix time limits, provide for exceptions, so that we may organize the world according to the new principles of the Charter. We shall have to decide whether we propose to leave individual States to reform their institutions at their own discretion, that is, to bring them into line with the provisions of the Charter of the United Nations, whenever and in whatever way they consider advisable.

If it is not possible to request other States to do what we have asked the Union of South Africa to do, we feel that very soon it may become necessary to revoke the precedent we have just established in the case of the laws governing the activities of Indians in that part of the world.

We have no wish to suggest that we are in any degree afraid of the dangers which the future may hold in store for small nations, once this principle is accepted that intervention in a negative form is not the kind of intervention which they unanimously reject. .... But neither should we like to refrain from saying that we attach great importance to defining at the appropriate time the new political and legal positions which we are adopting; for the evolution of international relations leads us to take action whereby one State today, another tomorrow, and a third the next day, at our direct or indirect, positive or negative command, may feel obliged to change its government within a specific period, on

pain of suffering the loss of normal relations with the United Nations and suffering the consequences of exclusion from all agencies.

Today we are dealing with Spain. But Spain is not the only country in which all the fundamental freedoms are not respected; nor is it the only one to which an invitation might be extended to change its government and revise its institutions and political practices in the manner desired by a majority of the United Nations. We are in the act of imposing on a State which does not belong to our organization standards of political life which are not yet fully applied in several of the Member countries.

But it does not cause me any misgivings that a start is being made with Spain in introducing a new order of government into the world. What does seem to me to be wrong is that this should be done without making it clearly understood that this is the path we intend to follow. ....

In the case of Spain, we understand that it has become an urgent matter to decide whether, notwithstanding the provisions of Article 2, paragraph 7, of the Charter, which are so categorically opposed to the intervention of the United Nations in the internal affairs of States - whether or not they are Members of the Organization - it is admissible for the Assembly to adopt forms of indirect or negative intervention to produce the same effects as open intervention.

We know that this time the aim is that Spain should, within a reasonable period, have a government constituted with the consent of the people, a government which has committed itself and does commit itself to respect freedom of speech, freedom of the press, freedom of religion and freedom of association, in order that elections may be held at once in which the Spanish people, free from intimidation, violence or pressure, may express their will without any party restrictions. ....

The Colombian delegation does not deny... the facts set forth in the preamble of the resolution adopted by the Political Committee with regard to the origin, characteristics and actions of Generalissimo Franco. But if, in the opinion of the General Assembly, this resolution does not in any of its parts involve one of the types of intervention which are prohibited in Article 2, paragraph 7, my delegation wishes to have it made entirely clear that, in approving it, the Assembly deliberately establishes a precedent which can from now on be adduced for the United Nations to assume the same attitude, and formulate similar preventive measures, in regard to any of its Members within whose jurisdiction there is no liberty, no freedom of speech, no freedom of the press and no freedom of association, or in which due respect is not paid to the express will of the people.



## 2. The Second, Third and Fifth Sessions.

At the second, third and fifth sessions, it became obvious that the majority of delegations were no longer in favour of maintaining in force the resolution 39(I) adopted at the first session of the General Assembly. Of the States which spoke in these debates a considerable number considered that this resolution was incompatible with the terms of Article 2(7) of the Charter, and eventually at the fifth session, it was expressly revoked. It must therefore be concluded that resolutions of the type adopted by the General Assembly in resolution 39(I), which sought indirectly to pressure Spain into changing her form of government are not within the competence of the General Assembly.

However, it is important to note that in all the debates which took place on this subject, none of the States which had, in the first session, differentiated between different types of recommendations, recanted its views. Practically nothing was said on this subject in the debates in the second, third and fifth sessions. On the other hand, no State supported the argument that as this subject was within the domestic jurisdiction of Spain, all recommendations were outwith the competence of the General Assembly. It is therefore reasonable to conclude that those States continued to adhere to the position which they adopted during the first session, and were prepared to allow some recommendations which dealt with internal Spanish affairs, but not others.

### (a) The Second Session.

At the second session the item dealing with the relations of Member States with Franco Spain was included on the agenda without any opposition,<sup>1</sup> and at the 118th meeting of the plenary session, the General Assembly adopted a resolution which expressed the confidence of the Assembly that the Security Council would

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1. G.A., (II), Plen., Vol. I, 91st mtg., p. 299.



exercise its responsibilities under the Charter whenever the situation in Spain merited it.<sup>1</sup> However, the Assembly rejected another paragraph of the same resolution which would have confirmed the resolution 39(I) of the previous year.

(b) The Third Session.

At the third session, in the debate in the First Committee, two draft resolutions were introduced; one by Brazil on behalf of Brazil, Bolivia, Colombia and Peru, and the other by Poland.

The Latin-American joint draft resolution read as follows:<sup>2</sup>

The General Assembly,

Considering that, during its second session in 1947, a proposal to confirm the resolution of 12 December 1946 on the political regime in power in Spain failed to obtain the approval of two-thirds of the votes cast;

Considering that certain Governments have interpreted the negative vote of 1947 as virtually revoking the clause in the previous resolution which recommended the withdrawal of heads of mission with the rank of ambassador or minister plenipotentiary accredited to the Spanish Government;

Considering that, in view of the doubt regarding the validity of this interpretation, other Governments have continued to refrain from accrediting heads of mission to Madrid, thereby creating inequality to their disadvantage;

Considering that such confusion may diminish the prestige of the United Nations, which all Members of the Organization have a particular interest in preserving;

Considering that in any event the 1946 resolution did not prescribe the breaking of political and commercial ties with the Spanish Government which have been the subject of bilateral agreements between the Governments of several Member States and the Madrid Government;

Considering that, in the negotiation of such agreements, Governments which have complied with the recommendation of 12 December 1946 are placed in a position of inequality which works to the disadvantage of economically weaker Governments;

Decides, without prejudice to the declarations contained in the resolution of 12 December 1946, to leave Member States full freedom of action as regards their diplomatic relations with Spain.

1. *ibid.*, Vol. II, 118th mtg., p. 1096; Res. 114(II).

2. G.A., (III/2), Plen., Annexes, a.i.12(55), p. 60, Doc. A/352.

The preamble to the Polish draft resolution,<sup>1</sup> recalled, inter alia, the origins and nature of the Franco regime, General Assembly resolutions 39(I) and 114(II), and the pronouncements made on the subject at Potsdam and San Francisco. The operative part stated:<sup>2</sup>

The General Assembly,

.....

(9) Calls upon the Members of the United Nations to comply with the letter and the spirit of the above enumerated pronouncements, declarations and resolutions;

(10) Recommends that all Members of the United Nations should as a first step forthwith cease to export to Spain arms and ammunition as well as all warlike and strategic material;

(11) Recommends that all Members of the United Nations should refrain from entering into any agreements or treaties with Franco Spain both formally and de facto.

The Latin-American draft was adopted by the First Committee by 25 votes to 16, with 16 abstentions,<sup>3</sup> but was rejected by the General Assembly in plenary session because it failed to receive the necessary two-thirds majority.<sup>4</sup> The Polish draft resolution was rejected both in the First Committee<sup>5</sup> and in the plenary session.<sup>6</sup> The debates in neither the First Committee<sup>7</sup> nor the plenary

1. G.A., (III/2), Plen., Annexes, a.i.12(55), Doc. A/860, p. 84.

2. *ibid.*

3. G.A., (III/2), 1st Com., 262nd mtg., pp. 238-240.

4. *ibid.*, Plen., 214th mtg., p. 501. The details are as follows:

In favour: Ecuador, Egypt, El Salvador, Greece, Honduras, Iceland, Iraq, Lebanon, Liberia, Nicaragua, Pakistan, Paraguay, Peru, Philippines, Saudi-Arabia, Siam, Syria, Turkey, Union of South Africa, Venezuela, Yemen, Argentina, Bolivia, Brazil, Colombia, Dominican Republic.

Against: Guatemala, India, Israel, Mexico, New Zealand, Panama, Norway, Poland, Ukrainian S.S.R., U.S.S.R., Uruguay, Yugoslavia, Australia, Byelorussian S.S.R., Czechoslovakia.

Abstaining: Ethiopia, France, Haiti, Iran, Luxembourg, Netherlands, Sweden, U.K., U.S.A., Afghanistan, Belgium, Burma, Canada, Chile, China, Denmark.

5. *ibid.*, 1st Com., 262nd mtg., pp. 240-244.

6. *ibid.*, Plen., 214th mtg., p. 504.

7. See, for example, the speeches of: U.S.S.R., pp. 196-201; Czechoslovakia, pp. 202-204; Ukrainian S.S.R., pp. 219-222; Bolivia, p. 234; Argentina, p. 235; Colombia, p. 235; and Poland, p. 236.

session contributed much that is of value for the present purpose and at times became bogged down in cold war attitudes.

Of the statements made in favour of the joint four power draft resolution, those of Peru and Ecuador are of most interest.<sup>1</sup>

In supporting the joint four power draft resolution, the Peruvian delegate stressed that resolution 39(I) constituted a double violation of the Charter. On the one hand it sought to cast doubt on the legitimacy of the Spanish Government, a power which, he contended, the United Nations did not have. On the other, by this resolution, the General Assembly sought to apply sanctions, a function which, he claimed, was confided by the Charter exclusively to the Security Council. He said that:<sup>2</sup>

The General Assembly could recommend that a State should respect human rights, but whether that State was a Member of the United Nations or not, the State concerned had the right of being heard and of appealing to a legal authority.

But the United Nations could not pass judgement on the legitimacy of a government, or outlaw that government. ....

Thus the distinction was clear. The General Assembly could be seized of questions concerning human rights, and make recommendations on that subject, after hearing the party concerned, and it could ask the International Court of Justice for an advisory opinion. But the General Assembly could not pass judgement on the legitimacy of a government. ....

The case raised by the delegation of Chile concerned the comitas gentium, and the United Nations had been entitled to formulate a recommendation on that question.<sup>3</sup> But there

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1. For other statements condemning resolution 39(I) as an intervention in Spain's domestic affairs, see G.A., (III/2), 1st Com., Colombia, 258th mtg., pp. 185-187; 262nd mtg., p. 235; El Salvador, *ibid*, pp. 237-238; Bolivia, 259th mtg., p. 201; and *ibid*, Plen., El Salvador, 214th mtg., p. 477; Argentina, *ibid*, p. 481.
  2. G.A., (III/2), 1st Com., 258th mtg., p. 197.
  3. This was a reference to a Polish allegation that Peru was adopting a double standard in this case and in the case concerning the violation of human rights in the U.S.S.R.; see *ibid*, p. 187.

was no question of taking any action whatsoever against the U.S.S.R. That question had nothing in common, therefore, with the question of Franco Spain, where it was actually being attempted to bring about the downfall of a government by an actual intervention in the internal affairs of that country.

Later in the same debate, the Peruvian delegate added:<sup>1</sup>

.....The General Assembly had no functions other than these specifically conferred upon it by Member States. .... The Charter was a contract and the General Assembly had no greater powers than those conferred upon it by the Charter, namely, to make recommendations concerning the respect of human rights. The Security Council had jurisdiction solely with respect to the maintenance of international peace and could impose sanctions only when there was a threat to or breach of the peace. The severing of diplomatic or commercial relations could be considered as a punitive measure, such as could be imposed only by the Security Council and not by the General Assembly.<sup>2</sup> It was neither a power nor a function of the United Nations to set up governments or to brand them with infamy. It could only regulate their operation. The organ whose function it was to take appropriate steps, particularly those indicated in the Charter, whenever a Government violated its international obligations in a manner constituting a threat to the peace, was the Security Council.

Any other procedure would be both unjustified and dangerous and would tend to transform the United Nations into a super-State. An organ of that kind, able to decide the fate and determine the

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1. *ibid*, p. 194.

2. While the merits of the argument that only the Security Council is competent to impose sanctions on States when there is a threat to or breach of the peace, is not relevant here, (such a contingency definitely not falling within the domestic jurisdiction of states), it is worth while noting that the Soviet bloc was in favour of allowing the General Assembly to carry out such a function. This attitude contrasts strangely with the views of the Soviet bloc on the legality of the Uniting for Peace Resolution. This innovation in communist thinking was not lost on some delegates even at this stage in United Nations practice, long before the Uniting for Peace resolution was adopted. Commenting on the Polish draft resolution, presented at the third session, on the question of Franco Spain, the Colombian delegate said that: [G.A., (III/2) 1st Com., 262nd mtg., p. 235].... "....The proposal provided that sanctions which, according to Article 41 of the Charter, came within the exclusive jurisdiction of the Security Council, could be approved by a vote of the General Assembly. That was a new orientation towards a more democratic system on the part of the Union of Soviet Socialist Republics and the five States which followed in its wake and created a precedent which might be of use in the future."

legitimacy of Governments would be categorically rejected by the peoples of the American continent. There had been doubts in the minds of the representatives at the San Francisco Conference that the aim of the Conference was not to create a super-State. They had known that the General Assembly would be a forum for world public opinion rather than a parliament promulgating laws to be applied by the Security Council as an executive organ. ....

The statement made by the delegation of Ecuador is of considerable interest, for it gives some kind of indication of the type of recommendation the General Assembly is competent to adopt where the matter concerned falls within the domestic jurisdiction of a particular State. The Ecuadorean delegate said that:<sup>1</sup>

....However, there was no doubt that the resolution of which Ecuador had not been in favour in 1946 and the one which had been reintroduced and on which it had abstained in 1947 were alien to the Charter which consistently stated that the Members of the United Nations must not intervene in the domestic affairs of States.

The Members of the Committee should not believe that everything outside the Organization was bad or false or assume that they had a kind of monopoly over the truth. There were two kinds of jurisdiction one of which affected sovereignty and the other the international character of every State. However, General Assembly resolution 59(I) on Franco Spain went beyond that and constituted an interference into the internal jurisdiction of a State. It was impossible to distinguish between the substance and the form of a State and it was not proper for the General Assembly to refer to particular cases of the constitutional life of a country. It could only ask a nation to take certain measures, to follow certain roads, and to give heed to certain aspirations in accordance with the spirit of the United Nations. The 1946 resolution directly affected the juridical integrity of a country and of a people and that integrity and unity were within the internal jurisdiction of that same people.

So far in the debates on the Spanish question, States had been concerned to show, on the one hand, that they were prepared to accept some kind of resolution even though they regarded the question as within the domestic jurisdiction of Spain, but on the other to oppose any recommendation which they

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1. G.A., (III/2), 1st Com., 259th mtg., p. 205-206.

considered exerted illegal pressure of that State. However, here, for the first time, the delegate of Ecuador, while deprecating resolution 39(I) as an example of intervention, gave some indication, in a general way, of what the General Assembly could do in such a situation. The Ecuadorean delegation seems to suggest that the General Assembly would be competent, in such circumstances, to make recommendations of a general character to the State concerned, requesting it to take some account of the "spirit of the United Nations" when formulating its domestic policy.

(c) The Fifth Session.

At the fifth session of the General Assembly, a joint resolution, submitted by the delegations of Bolivia, Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua and the Philippines, which provided for the revocation of resolution 39(I) was adopted by 38 votes to 10 with 12 abstentions.<sup>1</sup>

During the debates on this subject in the Ad Hoc Political Committee numerous States voiced their objection to resolution 39(I) on the grounds that it constituted an intervention in the domestic affairs of Spain. None, however, made any significant addition to the material already set out above. Objections were confined to resolution 39(I) alone and no significant indication was given

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1. G.A., (V), Plen., 304th mtg., para. 124. The details of voting were as follows:

In favour: Saudi-Arabia, Syria, Thailand, Turkey, Union of South Africa, U.S.A., Venezuela, Yemen, Afghanistan, Argentina, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, Greece, Haiti, Honduras, Iceland, Iran, Iraq, Lebanon, Liberia, Luxembourg, Netherlands, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines.

Against: Ukrainian S.S.R., U.S.S.R., Uruguay, Yugoslavia, Byelorussian S.S.R., Czechoslovakia, Guatemala, Israel, Mexico, Poland.

Abstentions: Sweden, U.K., Australia, Burma, Cuba, Denmark, Ethiopia, France, India, Indonesia, New Zealand, Norway.

of what type of resolution would have been acceptable in the circumstances.<sup>1</sup>

### 5. Conclusions.

The material in these debates concerning the nature of intervention is not plentiful and too much cannot be made of it. Nevertheless, it is important to note that the general trend in the statements of those who were concerned to avoid intervention in Spain's domestic affairs was not to eschew all United Nations action. There was a quite pronounced tendency to examine proposals with reference to their substance and to weigh their potentialities as intervention on that basis, rather than on the basis of some preconceived academic theories. Most of the practice of interest is, in this case, to be found in the first session. This, however, does not detract from its usefulness, but rather adds to it. It is clear that early in the practice of the General Assembly there was not the same predisposition to adopt rigid attitudes on intervention as later became evident.

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1. G.A., (V), Ad Hoc Pol. Com.; Bolivia, *ibid.*, 25th mtg., para. 28; Colombia, *ibid.*, paras. 44-47; Costa Rica, *ibid.*, para. 31; Ecuador, *ibid.*, 29th mtg., para. 33; Egypt, *ibid.*, 28th mtg., para. 40; Greece, *ibid.*, para. 44; Haiti, *ibid.*, 25th mtg., para. 41; Lebanon, *ibid.*, 29th mtg., paras. 39-40; Liberia, *ibid.*, 27th mtg., para. 23; Pakistan, *ibid.*, 26th mtg., paras. 15-20; Peru, *ibid.*, 25th mtg., para. 10; South Africa, 27th mtg., para. 26; Thailand, *ibid.*, 29th mtg., paras. 37-38.

### Chapter III

#### The Treatment of People of Indian Origin in South Africa.

The general trend towards the apparent acceptance, in practice, of a modified approach towards the question of intervention, evident in the previous case, is continued here, though admittedly intermittently and in varying degrees by different States. It becomes noticeable, for example, that the attitude of certain States towards what they consider as intervention hardens as the case history proceeds.

Throughout the discussions on this topic, grave doubts were continually expressed by many Members on the competence of the United Nations to entertain it. Furthermore, continual requests were made by some of those Members for the matter of competence to be submitted to the International Court of Justice for an advisory opinion. However, these pleas were never accepted by the voting majorities in the General Assembly and hence doubts on the legal aspects of the case remained unassuaged. It is important to note, however, that these doubts did not compel the majority of States entertaining them to vote against or abstain on all resolutions which were proposed during the discussions of this item. On the contrary, States which either maintained that the matter was within the domestic jurisdiction of South Africa, or at least that the subject of competence was doubtful, voted for resolutions which did not, in their opinion, violate the prohibition of non-intervention in the domestic affairs of States. The majority of States which considered the question of intervention seriously did not claim that the matter being within the domestic jurisdiction of South Africa, all recommendations were incompetent, or that there being a substantial doubt as to the competence of the United Nations to deal with this item, no recommendations could justifiably be adopted until the question of competence was settled. On the contrary the prevailing opinion seems to have been that while they could not vote for any



recommendation which would constitute intervention in South Africa's domestic affairs, were this item within that country's domestic jurisdiction, they could vote for a recommendation which, despite the domestic status of this question, did not constitute intervention anyway. This rationale is not stated explicitly, but as in the previous case, follows from the actions of the States in question.

The type of recommendation which these 'doubting' states were prepared to accept was generally one which called on the parties to enter into negotiations to settle their differences. However, it will be seen, as the material is presented, that these same States immediately objected to any clause in such recommendations which seemed to pronounce judgement on the merits of the case, or to impose conditions on the States concerned, subject to which the requested negotiations were to be carried out.

1. The First Session.

The General Assembly, at the second part of its first session adopted, at its 52nd meeting,<sup>1</sup> the following resolution on the subject, the text of which had been proposed jointly by the delegations of France and Mexico:<sup>2</sup>

The General Assembly,

Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

1. States that because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;

2. Is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter.

3. Therefore requests the two Governments to report at the next session of the General Assembly the measures adopted to this effect.

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1. G.A., (I/2), Plen., 52nd mtg., p. 1061.

2. *ibid*, 50th mtg., p. 1007; Resolution 44(I).

This resolution was adopted by 32 votes to 15, with 7 abstentions.<sup>1</sup>

Of the States voting against or abstaining on the vote on this resolution, South Africa,<sup>2</sup> the United States,<sup>3</sup> El Salvador,<sup>4</sup> the Netherlands,<sup>5</sup> Belgium,<sup>6</sup> the United Kingdom,<sup>7</sup> New Zealand,<sup>8</sup> and Argentina<sup>9</sup> all expressed their doubt on the competence of the United Nations to deal with this matter and supported the idea of a request to the International Court of Justice for an advisory opinion thereon. The Belgian delegate put the case for having an advisory opinion succinctly when he said:<sup>10</sup>

In my view, a question as important for everybody as that of the respective limits of the principles of intervention and non-intervention in the domestic affairs of Member States should never, if brought up seriously, be decided by omission and without the most careful consideration. ....

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1. The details of voting were as follows:

In favour: Afghanistan, Byelorussian S.S.R., Chile, China, Colombia, Cuba, Czechoslovakia, Dominican Republic, Egypt, Ethiopia, France, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Mexico, Norway, Panama, Philippines, Poland, Saudi-Arabia, Syria, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia.

Against: Argentina, Belgium, Canada, Costa Rica, El Salvador, Greece, Luxembourg, Netherlands, New Zealand, Nicaragua, Paraguay, Peru, Union of South Africa, United Kingdom, United States.

Abstentions: Australia, Bolivia, Brazil, Denmark, Ecuador, Sweden, Turkey.

2. G.A.,(I/2), Plen., 50th mtg., p. 1009.

3. *ibid*, pp. 1010-1014.

4. *ibid*, pp. 1014-1015.

5. *ibid*, 51st mtg., pp. 1031-1032.

6. *ibid*, p. 1032.

7. *ibid*, pp. 1033-1036.

8. *ibid*, 52nd mtg., pp. 1046-1047.

9. *ibid*, pp. 1047-1048.

10. *ibid*, 51st mtg., pp. 1032-1033.

It had been shown that, for the United Nations, this question implies a very serious choice between two methods: the purely political method, which claims absolute supremacy, and the politico-legal method which required that questions of law shall be decided legally and political questions politically.

Although there were significant doubts on the competence of the United Nations to entertain this question, States did not at this time place too great emphasis on the problems surrounding the prohibition of intervention in the domestic affairs of another State.

## 2. The Second Session.

At the second session, there was again little treatment of the question of intervention. Again, however, as at the first session, a significant number of States expressed their doubts on the competence of the United Nations to deal with the subject. South Africa,<sup>1</sup> New Zealand,<sup>2</sup> Denmark,<sup>3</sup> Belgium,<sup>4</sup> Nicaragua,<sup>5</sup> Greece,<sup>6</sup> Costa Rica,<sup>7</sup> Canada,<sup>8</sup> and Ecuador,<sup>9</sup> all, either expressly or by implication, indicated their doubts on the competence of the United Nations to deal with the item. Argentina,<sup>10</sup> Brazil,<sup>11</sup> Norway<sup>12</sup> and

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1. G.A., (II), 1st Com., 106th mtg., pp. 419-422.

2. *ibid*, 107th mtg., pp. 433-434.

3. *ibid*, pp. 434-435.

4. *ibid*, p. 439.

5. *ibid*, p. 440.

6. *ibid*, 108th mtg., p. 447.

7. *ibid*, 111th mtg., p. 464.

8. *ibid*, p. 470.

9. *ibid*, 112nd mtg., p. 478.

10. *ibid*, 109th mtg., p. 449.

11. *ibid*, p. 450.

12. *ibid*, 111th mtg., pp. 464-465.

El Salvador<sup>1</sup> all favoured an application to the International Court for an advisory opinion on the legal aspects of the matter. As a result of these doubts on competence and on the exact extent of the legal obligations involved, the General Assembly failed to adopt any resolution on the subject.

Of the draft resolutions submitted during the course of the debates, two received serious consideration - that proposed by the Indian delegation, and that proposed jointly by Belgium, Brazil, Cuba and Denmark.

The terms of the Indian resolution, were as follows:<sup>2</sup>

1. Whereas in resolution 44(I) dated 8 December 1946 the General Assembly, taking note of an application made by the Government of India regarding the treatment of Indians in the Union of South Africa, observed that because of that treatment, friendly relations between the two Member States had been impaired and, unless a satisfactory agreement was reached, their relations were likely to be further impaired;

2. Whereas after careful consideration of the matter, the General Assembly was of the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter, and

3. Whereas the General Assembly requested the two Governments to report at the next session of the General Assembly the measures adopted to that effect,

4. The General Assembly,

Having considered the reports submitted by the Government of India, and the Government of the Union of South Africa pursuant to the aforesaid resolution,

Reaffirms its resolution dated 8 December 1946;

5. Requests the two Governments to enter into discussions at a round table conference on the basis of that resolution without any further delay and to invite the Government of Pakistan to take part in such discussions.

6. Requests that the results of such discussions be reported by the Governments of the Union of South Africa and India to the Secretary-General of the United Nations, who shall from time to time make inquiries from them and submit a report on the action taken on this resolution by the two Governments to the Assembly at its next session.

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1. *ibid*, Plen., 119th mtg., Vol. II, pp. 1122-1125.

2. *ibid*, Plen., Vol. II, Annexes, a.i. 98, annex 26, p. 1616, Doc. A/492, Report of the First Committee; see also, *ibid*, 119th mtg., p. 1111.

The terms of the joint four power draft resolution were as follows:<sup>1</sup>

The General Assembly,

Considering the reports submitted by the Governments of India and the Union of South Africa following upon the resolution of the General Assembly of 8 December 1946 which drew their attention to the desirability of their reaching an agreement;

Considering that, according to the opinion expressed by the said resolution, the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter; that, in consequence, if no direct agreement should be reached between the two Governments it is, above all, necessary to determine the rights and obligations of the two States; that, according to the Charter and to the Statute of the International Court of Justice, the Court is particularly designed to deal with such questions,

Calls upon the two Governments, after inviting the Government of Pakistan to take part in their negotiations, to continue their efforts with a view to reaching an agreement settling their dispute through a round table conference or other direct means or, if necessary, by mediation or conciliation, and, should they fail to reach such an agreement, to submit the question of the extent of the said obligations under the agreements concluded between them and under the relevant provisions of the Charter to the International Court of Justice.

These two resolutions were very similar. Both called on the Governments concerned to enter into negotiations to find a solution for their differences. But in the four power draft provision was made for judicial determination of the legal aspects of the dispute, while in the Indian draft, it was not. The Indian draft also recommended that negotiations be carried out on the basis of resolution 44(I) to which condition a considerable number of States objected.

These differences between the two drafts, though small, were responsible for the defeat of both of them. The Indian draft resolution, though accepted

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1. G.A., (II), Plen., Vol. II, Annexes, a.i.98, annex 26a, p. 1616, Doc . A/496.

by the First Committee,<sup>1</sup> was rejected by the plenary session as it did not receive a two-thirds majority.<sup>2</sup> It should be noted, however, that a majority of States which voted against or abstained in the vote on the Indian draft resolution were able to vote for the similar four power draft.<sup>3</sup> Furthermore, the majority of States which doubted the competence of the United Nations in this matter voted in favour of the four power draft, while they either voted against or abstained on the vote on the Indian draft.

Little attention was paid to the question of intervention in these debates and it would therefore be unwise to draw great conclusions on the legal aspects

1. The details of voting in the First Committee were as follows:

See G.A., (II), 1st Com., 112nd mtg., p. 481;

In favour: Afghanistan, Byelorussian S.S.R., Chile, China, Colombia, Czechoslovakia, Egypt, Ethiopia, France, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Mexico, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Syria, Turkey, Ukrainian S.S.R., U.S.S.R., Venezuela, Yemen, Yugoslavia,

Against: Australia, Belgium, Canada, Costa Rica, Denmark, Greece, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Sweden, Union of South Africa, U.K., U.S.A.

Abstaining: Argentina, Brazil, Cuba, Dominican Republic, Ecuador.

2. The details of voting in the plenary session were as follows:

See *ibid*, Plen., Vol. II, 120th mtg., p. 1169:

In favour: Afghanistan, Byelorussian S.S.R., Chile, China, Colombia, Czechoslovakia, Egypt, Ethiopia, France, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Syria, Turkey, Ukrainian S.S.R., U.S.S.R., Venezuela, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Brazil, Canada, Costa Rica, Denmark, El Salvador, Greece, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Sweden, South Africa, U.K., U.S.A.

Abstaining: Bolivia, Cuba, Dominican Republic, Ecuador, Peru, Uruguay.

3. The details of voting in the plenary session are as follows:

See *ibid*, p. 1170:

In favour: Argentina, Australia, Belgium, Brazil, Canada, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Peru, Sweden, Union of South Africa, U.K., U.S.A., Uruguay.

Against: Afghanistan, Byelorussian S.S.R., China, Colombia, Czechoslovakia, Egypt, Ethiopia, France, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Syria, Turkey, Ukrainian S.S.R., U.S.S.R., Yemen, Yugoslavia.

Abstaining: Bolivia, Chile, Venezuela.

of the matter therefrom. However, this apparent lack of consistency in the votes in the second session is of interest because it heralds further developments in subsequent sessions. For, from the third session onwards, in this case, States began to differentiate, openly, between different types of recommendations on this matter and to support some while at the same time opposing others, on the grounds of a lack of competence. Though they do not state so explicitly, countries adopting this attitude seem to imply that the competence to adopt recommendations concerning matters which, in their opinion, fall essentially within the domestic jurisdiction of another, is a matter of degree and that whereas the General Assembly is competent to adopt some recommendations, it is incompetent to adopt others on account of their terms.

### 3. The Third Session.

#### (a) Resolutions Presented in the First Committee.

At this session of the General Assembly, resolutions were introduced in the First Committee by South Africa, India, France and Mexico jointly, and Australia, Denmark and Sweden jointly.

##### (i) The South African Draft Resolution.

At the 265th meeting of the First Committee, the South African delegation introduced a draft resolution calling upon the General Assembly to decide that this item was essentially within the domestic jurisdiction of South Africa and that it did not fall within the competence of the United Nations.<sup>1</sup> It was not accepted by the Committee, being defeated by 33 votes to 5, with 12

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1. G.A., (III/2), 1st Com., 265th mtg., p. 280.

abstentions.<sup>1</sup>

(ii) The Indian Draft Resolution.

The draft resolution submitted by the Indian delegation,<sup>2</sup> after certain revisions, was adopted by the Committee by 21 votes to 17, with 12 abstentions.<sup>3</sup>

The text of this resolution was as follows:

The General Assembly,

Having considered the communication made by the Government of India to the Secretary-General of the United Nations dated 12th July 1948,

Mindful of the preamble of the Charter and of the provisions relating to the promotion of human rights and fundamental freedoms contained in Article 1 (paragraph 3), Article 13 (paragraph 1), Article 55 (sub-paragraph c), Article 56 and Article 62 of the Charter.

Having regard to its resolution 103(I) of 19 November 1946 against racial discrimination and resolution 217 (III) of 10 December 1948 proclaiming a Universal Declaration of Human Rights which entitles everyone to all the rights and freedoms set forth in that Declaration without distinction of any kind such as race, colour, et cetera.

Recalling paragraphs 1 and 2 of its resolution 44(I) of 8 December 1946,

1. Is of the opinion that the treatment of persons of

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1. ibid, 268th mtg., p. 321. The details of voting were as follows:  
In favour: Argentina, Brazil, Greece, the Netherlands, South Africa,  
Against: Venezuela, Yemen, Yugoslavia, Afghanistan, Byelorussian S.S.R., Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Mexico, Norway, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Siam, Syria, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay.  
Abstentions: Australia, Belgium, Burma, Canada, Dominican Republic, France, New Zealand, Nicaragua, Peru, Sweden, Turkey, U.K.
  2. G.A., (III/2), Plen., Annexes, a.i. 8(43), p. 87, Doc. A/C.1/461/Rev. 1.
  3. ibid, 1st Com., 268th mtg., p. 321. The details of voting were as follows:  
In favour: Egypt, Haiti, India, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi-Arabia, Syria, Ukrainian S.S.R., U.S.S.R., Yemen, Yugoslavia, Afghanistan, Byelorussian S.S.R., Chile, China.  
Against: Denmark, Ecuador, France, Greece, Norway, Panama, Peru, Siam, Sweden, Turkey, Union of South Africa, U.K., U.S.A., Argentina, Australia, Belgium, Brazil.  
Abstentions: Costa Rica, Cuba, Dominican Republic, Honduras, Netherlands, New Zealand, Nicaragua, Uruguay, Venezuela, Burma, Canada, Colombia.



Indian and Pakistan origin in the Union of South Africa is not in conformity with the relevant provisions of the Charter, the resolutions of the Assembly and the international obligations under the agreements concluded between the two Governments;

2. Recommends that a Commission, composed of representatives of three Members of the United Nations, one nominated by India, one by the Union of South Africa and one to be elected by the two representatives so nominated, be appointed:

(a) To study the situation arisen out of the treatment of persons of Indian and Pakistan origin in South Africa;

(b) To report to the fourth regular session of the General Assembly the result of its study and submit recommendations for the solution of the problem.

(iii) The Draft Franco-Mexican Resolution.

This draft resolution, as amended by the proposals of Iran,<sup>1</sup> the Byelorussian S.S.R.,<sup>2</sup> and Haiti<sup>3</sup> was also adopted by the Committee.<sup>4</sup> The text was as follows:<sup>5</sup>

The General Assembly,  
Taking note of the application made by the Government of India regarding the treatment of People of Indian origin in the Union of South Africa as well as of considerations put forward by the Government of the Union, and having re-examined the matter;  
Invites the Governments of India, Pakistan and the Union of South Africa to enter into discussions at a round table

1. G.A.,(III/2), Plen., Annexes, a.i.8(45), para. 11, p. 87, Doc. A/863.

2. *ibid*, para. 12.

3. *ibid*, para. 13.

4. G.A.,(III/2), 1st Com., 268th mtg., p. 324. The details of voting were 39:2:9 as follows:

In favour: Denmark, Dominican Republic, Ecuador, Egypt, France, Greece, Haiti, Honduras, Iran, Iraq, Lebanon, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Saudi-Arabia, Siam, Sweden, Syria, Turkey, U.S.A., Uruguay, Venezuela, Yemen, Afghanistan, Belgium, Brazil, Burma, Canada, Chile, Colombia, Costa Rica, Cuba.

Against: South Africa, Australia.

Abstentions: India, Poland, Ukrainian S.S.R., U.S.S.R., U.K., Yugoslavia, Argentina, Byelorussian S.S.R., China.

5. G.A.,(III/2), Plen., Annexes, a.i.8(45), p. 88, Doc. (A/863).

conference, taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights.

(iv) The Joint Draft Resolution of Australia, Denmark and Sweden.

This joint draft resolution, after certain revisions, provided, inter alia, that the General Assembly should call upon the Governments of India and the Union of South Africa to renew their efforts to reach an agreement settling their dispute through a round table conference or by other means, such as mediation and conciliation; invited the two Governments to associate the Government of Pakistan in their efforts; and requested the President of the General Assembly and the Secretary-General to render all assistance in bringing the parties together and, if the parties agreed, to designate a Mediator.

After discussion, the representatives of these three States agreed to withdraw their resolution, reserving the right to present further proposals in the General Assembly.<sup>1</sup>

With the details of these resolutions and the voting thereon in mind, and remembering the stands taken in previous sessions on the same topic by the various States, attention must now be focused on the actual statements made in the debates leading up to the votes in the First Committee of this session.

(b) The Attitude of States - First Committee.<sup>2</sup>

(1) New Zealand.

New Zealand again noted that there was considerable doubt as to the correct interpretation of Article 2(7) and that correct procedure would have been to request the International Court of Justice for an advisory opinion on the subject. Because of these doubts on competence, New Zealand abstained in the

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1. G.A., (III/2), Plen. Annexes, a.i. 8(45), para. 8, p. 86, Doc. A/863.

2. The material is presented in the order in which States spoke in the First Committee debate. Only statements on intervention pertinent to the present line of inquiry are presented.

votes on the South African and Indian resolutions. However, these doubts did not compel her to abstain on all proposals, for as noted above, she voted for the Franco-Mexican draft. Elaborating New Zealand's views, Sir Carl Berendsen said that:<sup>1</sup>

.... In view, however, of the grave doubts that existed regarding the scope of the paragraph in question, it seemed that the Committee's best course would be not to take any steps on the substance of the question, but to try to work out some proposal for mediation.

The delegation of New Zealand was ready to support any proposal of that kind. On the other hand, it could not support any resolution containing any suggestion of condemnation or even toleration, or any decision dealing with the substance of the question.

New Zealand did not give any explanation of why, if she doubted the competence of the United Nations to deal with this item, she was able to vote for the Franco-Mexican draft, while at the same time opposing the Indian. It is suggested that the answer must lie in the terms of the Franco-Mexican resolution, and that whereas because of her doubts on competence, the terms of the Indian resolution would have amounted, in New Zealand's opinion, to intervention, those of the Franco-Mexican one did not.

(ii) Belgium.

By the general tenor of his speech, the Belgian delegate, Mr. Ryckmans, indicated that, in the opinion of his delegation, the matter fell essentially within the domestic jurisdiction of South Africa. In such circumstances, it might have been expected that the Belgian delegation would have voted against all resolutions put before the Committee or at least abstained, for it has already been seen that in agenda debates Belgium assumed a particularly extreme view of the meaning of intervention. However, such was not the case in

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1. G.A., (III/2), 1st Com., 265th mtg., p. 281.

this instance. From the statements made it appears that even in such circumstances Belgium is prepared to accept some discussion of and recommendation on a domestic matter.

Recalling the case of the observance of human rights in Bulgaria and Hungary and the treatment of various church dignitaries there, and pointing out that the General Assembly had had a certain competence in that case only because of the peace treaties with those countries, the Belgian delegate said that:<sup>1</sup>

However, in the present case, and in his draft resolution and in his statement, the Indian representative had not specifically referred to any treaty. Moreover, in his letter to the Secretary-General (A/577) specifically mentioned in his draft resolution, the Indian representative had not merely dealt with the question of racial discrimination against Indians in South Africa but with discrimination against non-whites in general. There was no treaty regarding the manner in which the Union of South Africa should treat its nationals other than Indians who were not of European race. The conclusion to be drawn from those considerations was that the discussion of that question could not result in a recommendation. Therefore the question arose as to whether the discussion of the matter fell within the competence of the General Assembly, and, if it was permissible, whether it was opportune.

Recalling the conditions under which Article 2, paragraph 7, had been drafted at San Francisco, Mr. Ryckmans thought that if the words 'deal with' had been suggested to replace the word 'intervene', they would have met the intention of most delegations, at that time, to forbid the General Assembly to deal in any fashion whatsoever - not only in the form of recommendations but even in the form of discussion - with questions essentially within the domestic jurisdiction of States. However, some doubt remained and was aggravated by the fact that, according to rule 110 of the rules of procedure, the General Assembly had to defer the vote on the question of competence until the end of the discussion, namely until just before the vote on the substance was taken. That, at least, enabled the General Assembly to discuss a question, if not to make a recommendation and that was the point of view upheld by the Belgian delegation during the discussion of the case of Cardinal Mindszenty.

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1. G.A., (III/2), 1st Com., 266th mtg., pp. 288.

This statement at least accepts that some discussion of a matter is within the competence of the General Assembly, if only on procedural grounds. Still, it indicated Belgium's continued hostility to any recommendation on the subject.

Later on in the debate Mr. Ryckmans explained why he intended to vote against the South African resolution denying competence and against the Indian draft resolution and why he was opposed to the terms of the proposals submitted jointly by the delegations of Australia, Denmark and Sweden. Speaking of the South African draft he said that he:<sup>1</sup>

.....could not vote in favour of the draft resolution... because it denied the competence of the General Assembly on that question. He agreed that the General Assembly could not make recommendations on that subject. However, since it was doubtful whether the General Assembly could discuss the question at all, the Belgian representative felt that the General Assembly should not take a decision on its own competence, but should refer the matter to the International Court of Justice.

This statement would appear to back-pedal somewhat, as it placed in doubt the right to discuss which in his previous statement the Belgian delegate appeared to have countenanced.

The Belgian delegate then explained his opposition to the Indian draft resolution. It implied, he said, that the General Assembly had competence to consider the issue. He was convinced that it would not bring a solution any closer and in addition, it included an a priori conclusion which the commission to be set up was expected to reach.

Belgium opposed the joint draft resolution of Australia, Denmark, and Sweden because it called for the intervention of the President of the General Assembly and the Secretary-General without any invitation to these two having

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1. *ibid.*, 268th mtg., pp. 320-321.

been issued by the parties concerned.

However, no sooner had Mr. Ryckmans said this than he announced Belgium's intention of voting in favour of the France-Mexican draft resolution. Unfortunately, he did not explain how he was able to do so when he had just said that the Assembly could not make recommendations on this subject.

It is difficult to see in what legal way the Franco-Mexican draft differed from the Indian. The Franco-Mexican draft took note of the application of the Government of India concerning the treatment of people of Indian origin in South Africa and this would normally be construed as an assertion of competence to entertain such a matter.

The main difference between the two drafts is in the extent of their operative provisions and it must be presumed, in the absence of any explanation to the contrary, that whereas Belgium considered the establishment of a commission to study the problem as intervention in the domestic affairs of South Africa, she did not feel that a call on her to negotiate with India and Pakistan suffered from the same defect. It appears that even in these dubious legal circumstances, Belgium considered some kind of recommendation to be within the competence of the General Assembly.

(iii) France.

The position adopted by the French delegation at the third session on this topic is of particular interest. It will be recalled that France, together with Mexico, had sponsored the first resolution to be adopted on this subject at the first session of the General Assembly and that at the present session was again, with Mexico, the co-sponsor of a draft resolution which was ultimately adopted.

On behalf of France, Mr. Garreau first of all indicated that in his view the matter did not fall within the domestic jurisdiction of South Africa.

However, he then drew back and made statements which render the French position somewhat equivocal. He said that:<sup>1</sup>

... when the Indian complaint had first been submitted to the General Assembly in 1946, his delegation had been in serious doubt as to the Assembly's competence to take any action in the matter. This doubt was, however, dispelled by the fact that the problem presented two aspects: in the first case, there was the question of the relationship between different racial groups in South Africa which clearly fell within the domestic jurisdiction of the Union; on the other hand, there was the question involving the latter's obligations under its existing agreements with India which presented an international character.

For these reasons, the French and Mexican delegations had joined in 1946 in submitting a draft resolution, which the Assembly had later adopted, aimed at promoting a settlement by mutual agreement between the two disputants. The matter had again been discussed at the second regular session in 1947 but, since the Assembly had been unable to obtain the necessary majority to take any further action, the resolution of 1946 remained in force. The present position of the French delegation was that the Assembly could not take any further action in the matter without violating Article 2, paragraph 7 of the Charter.

Mr. Garreau thought that the question of domestic jurisdiction had been very clearly stated by the representative of the Union of South Africa. He noted that the Indian draft resolution (A/C.L/461/Rev.1) at present before the Committee dealt with discrimination not only against the Indian community but also against other minority groups of Asiatic origin in South Africa. Clearly, it was a question of relations between a sovereign Government and its citizens in which the United Nations had no competence to interfere. As the representative of India had himself admitted, the Indian community concerned was composed of South African citizens of Indian origin and not of foreign nationals residing in the Union of South Africa.

Mr. Garreau shared the view of the representative of Argentina that the fact of their racial origin was no justification for intervention on their behalf by the Indian Government. He also upheld the interpretation of the words 'to intervene' given by the Belgian representative to the effect that it really meant 'to deal with', thus giving it a broad sense.

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1. *ibid*, 266th mtg., pp. 290-291. Emphasis added.

2. See *supra*, p. 72.

It remained true, however, that the two Governments concerned had concluded certain agreements. It was then up to those two Governments to settle between themselves any misunderstanding that might have arisen concerning the text of those agreements. If the parties could not agree on the meaning or on the implementation of their agreements they could always have recourse to the International Court of Justice. The question did not seem to the French delegation to be a matter for the General Assembly.

In conformity with the foregoing position, the French delegation was once again joining with the delegation of Mexico in submitting a draft resolution to the Committee.....

Finally, Mr. Garreau stated that his delegation would abstain from voting in respect of the draft resolution submitted by the Union of South Africa (A/C.1/460). Its reason for so doing was to avoid any decision as to the Assembly's competence. Mr. Garreau hoped that the adoption of the French-Mexican draft resolution would make possible a solution based upon mutual understanding between the parties.

From this, it is not too clear what the French position, to which Mr. Garreau refers, is. He says, on the one hand, that the question has an international character, but then goes on to stress its domestic qualities. On the basis of this latter assertion, he claims that the United Nations has no competence to intervene, a word which, in his opinion, means 'deal with'. But if the United Nations has no competence to deal with this item, how can it have the competence to adopt the resolution submitted by the French delegation itself? The theory expounded by Mr. Garreau and his actions do not tally.

In the light of the French actions on this occasion, it appears that whatever measures the United Nations is prohibited from taking by the adoption of this broad interpretation of the term 'intervene', it is not prevented from calling on a State within whose domestic jurisdiction the matter falls, to settle its differences with respect thereto with another State, by negotiation. Once again the conclusion is reached that contrary to dogmatic assertion, France does not consider all recommendations addressed to a State as intervention.



(iv) Australia.

On numerous occasions Australia had taken a strong line against any form of United Nations action where the matter fell within the domestic jurisdiction of any State. In this case, however, she showed herself undecided not only as to the question of domestic jurisdiction, but also as to how far the United Nations can act in such circumstances. In the first session, she abstained from the vote on the Franco-Mexican draft resolution, although this merely asked the two Governments concerned to report to the Assembly what measures they had taken to accord to the people concerned, treatment in accordance with the provisions of the Charter and the agreements concluded between them. In the second session she voted against the resolution calling on the parties to enter into discussions on the subject, and which reaffirmed the previous year's resolution. In this, the third session, she abstained in the vote on the South African draft resolution; voted against the Indian draft; and also against the Franco-Mexican draft, even though this latter also only called on the parties to negotiate in order to reach a solution to the problem. Yet the draft resolution which Australia, along with Denmark and Sweden, proposed to the Committee, involved the United Nations in a more extreme form of intervention than that foreseen by the resolutions of the first two sessions which she had voted against. This Australian draft, as well as calling on the States to negotiate to find a settlement, called for the uninvited assistance of the President of the General Assembly and the Secretary-General in these negotiations. No explanation of this attitude is to be found in the statement of the Australian delegation in the First Committee. The Australian delegate, Mr. Plimsoll, said that he:<sup>1</sup>

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1. *ibid.*, 266th mtg., p. 295.

.. agreed with the previous speaker that the question was extremely complex and much time would be required to reach a solution. He considered that the Assembly would be unwise to issue a condemnation of any of the parties to the dispute for the only hope of reaching a practical and a just solution was to bring the parties together in order to settle their differences by mutual agreement in accordance with the principles of the Charter. In that spirit the Australian delegation had joined with the delegations of Denmark and Sweden in submitting a draft resolution (A/C.1/465) calling upon the parties to renew their efforts to reach an agreement by the best means possible. The chief difference between that proposal and the French-Mexican draft resolution consisted in the fact that the former laid down no prerequisites or conditions for the negotiations whereas the latter required the discussion to be based upon General Assembly resolution 44(I) of December 1946. Mr. Plimsoll believed that that condition was unwise since the Government of the Union of South Africa had already in the past refused to participate in talks on the basis of the 1946 resolution. ....

However, these remarks do not accord with the final terms of the Franco-Mexican resolution which made no reference to the 1946 resolution.<sup>1</sup> Yet despite this, the Australian delegation still voted against it. Australia's position in this instance is to say the least, unclear, and when it is compared with her statements made in subsequent sessions on domestic jurisdiction and intervention, is plainly illogical unless she adhered here to a modified definition of intervention which does not condemn all recommendations.<sup>2</sup>

(v) Greece.

Greece voted in favour of the South African motion denying the competence of the United Nations to entertain the question and, naturally enough, in view of this vote, against the Indian draft resolution. However, she also found it possible to vote in favour of the Franco-Mexican proposal. In thus voting, the Greek delegation seemed to rely more on political considerations than on

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1. The French delegate, *ibid*, 267th mtg., p. 297, amended the Franco-Mexican proposal to exclude the reference to resolution 44(I).

2. At the Plenary Session, the Australian delegation voted for the Franco-Mexican draft.

legal. Explaining Greece's position<sup>1</sup> on this question, Mr. Kyrrou said that:

.... The General Assembly, however, was a political body composed of different nations; its chief purpose was the settlement of political disputes. It was neither a court of law nor an organization for moral improvement. The aim of the Committee's discussions should therefore be to seek suitable means for a final settlement of the dispute. Bearing those considerations in mind, it would appear that the only method which might lead to an effective solution of the problem was that of direct contact between the two States concerned. The General Assembly could hardly take up the substance of the problem, whereas, if the Committee were to recommend direct negotiations between the parties, the chances of reaching concrete results would certainly be much greater. Such a method would be preferable to that of mediation or conciliation, which always contained a certain element of pressure. If good results were to be achieved, a draft resolution should not be based on resolution 44(I) of 1946.

Although Greece does not here stress the legal aspect of the problem, other than to say that the General Assembly could hardly take up the substance of the problem, the exact significance of which is not clear, her actions on this, and subsequent occasions, are somewhat contradictory.

By voting for the South African motion, she accepted the hypothesis that the General Assembly was incompetent to deal with the item.<sup>2</sup> But if the subject fell essentially within the domestic jurisdiction of South Africa, how could the General Assembly adopt a resolution which dealt with it in any way, even if that recommendation only called on the parties to negotiate? The answer must be that Greece did not consider a recommendation of the type proposed by France and Mexico to be intervention in the affairs of a State. Once again, there is a discrepancy between words and actions, leading to the conclusion that not all recommendations constitute intervention, even if the subject matter thereof does fall within the domestic jurisdiction of a State.

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1. *ibid.*, 267th mtg., p. 298.

2. *ibid.*, p. 300

(vi) Canada.

While at the second session of the General Assembly, Canada had had some doubts on the legal aspects of the matter, at this session she seemed to accept the hypothesis that the competence of the General Assembly to adopt a recommendation is a question of degree. Her approach to the problem of the relationship between the prohibition of intervention and the power of recommendation is overtly liberal, as it was in the case of discussions. In Canada's opinion, the question of competence can only be decided once there is a specific proposal before the General Assembly, and it seems to be inferred that whereas some recommendations will be outwith the competence of the General Assembly, not all recommendations necessarily are so. Explaining Canada's position, General McNaughton said that:<sup>1</sup>

....while agreeing that the Union of South Africa was within its rights in contesting the competence of the General Assembly in the question, he felt that a distinction must be made between the right of the Assembly to discuss the problem under the terms of the Charter and its competence to intervene.

He recalled that, when the same question had been discussed in 1946, the Canadian representative had stressed that the rights of the Assembly to discuss questions under Articles 10 and 14 of the Charter would be seriously impaired if too great force were given to the domestic jurisdiction clause in Article 2, paragraph 7, of the Charter. A happy balance must be maintained between those two concepts. Such a happy balance could not be expressed in a general principle, but must be determined by the facts of each particular case. The question of competence in the case under consideration could not be decided until the Committee had a specific proposal before it, prescribing the kind of action the Assembly might be invited to take.

It was for that reason that rule 110, which laid down that any motion calling for a decision on the competence of the General Assembly must be put to the vote immediately before a vote was taken on the proposals concerning the substance of the question, had been included in the rules of procedure.

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1. Ibid, p. 500.

(vii) The United Kingdom.

Although the United Kingdom has been one of the foremost exponents of the broad view of the meaning of the word 'intervene', in this case her attitude was somewhat different. In the first two sessions she expressed grave doubts on the competence of the United Nations to deal with the question, but in the third session abstained on the South African motion denying that competence. She subsequently voted against the Indian draft resolution and abstained on the Franco-Mexican one. In explaining the United Kingdom view, Mr. Walker said that:<sup>1</sup>

.... The United Kingdom would abstain from the vote on the competence of the General Assembly in view of the importance of that question and the grave doubts raised by some clauses in the Charter. His delegation's position had always been that the proper course in such matters was to refer them to the International Court of Justice for decision, as the General Assembly could not decide its own competence in so grave a matter. Strictly speaking, he should continue to abstain on the other proposals, but such a course might be open to misunderstanding. He would therefore have to vote against the Indian draft resolution (A/C.1/461/Rev.1) as it recommended the establishment of a commission, a step which he felt would be a grave precedent and which would not be in conformity with the terms and intentions of the Charter. Even if all the arguments used by the representative of India were correct, it would still not be right to impose a commission on an unwilling country. His delegation would vote for the Australian, Danish and Swedish draft resolution (A/C.1/465/Rev.1) which offered the best possible way to a solution.

As Mr. Walker himself said, Great Britain ought at least to have abstained in all votes in view of the uncertainty which she felt about the question of competence. However, that doubt seems to have turned into certainty in so far as the Indian draft resolution was concerned, for in his opinion, such a recommendation would be contrary to the terms and intentions

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1. *ibid.*, 268th mtg. p.320.

of the Charter. Again, given the fact that she was uncertain about the competence of the General Assembly, Great Britain ought to have indicated her intention to abstain on the Australian, Danish and Swedish draft, or at the very most to vote against it, pending the resolution by the International Court of the question of competence. But instead, she indicated her intention to vote for it. Such an action would surely only be possible if she considered such a recommendation not to constitute intervention, whatever the status of the item in question.

(c) The Plenary Session.

At the plenary session no statements were made which are of interest for the present purpose. Of the two resolutions recommended by the First Committee, only the Franco-Mexican one was adopted, the Indian one not being pressed to a vote.<sup>1</sup>

4. The Fifth Session.

At the fifth session, the item was referred to the Ad Hoc Political Committee, in which two resolutions were proposed. The resolution proposed jointly by the delegations of Burma, India, Indonesia and Iraq<sup>2</sup> expressed the opinion that the Group Areas Act, an act of the South African Parliament

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1. G.A., (III/2), Plen., 212th mtg., p. 455; Res. 265(III). The voting - 47:1:10 - was as follows:

In Favour: Egypt, El Salvador, France, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Israel, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Saudi-Arabia, Siam, Sweden, Syria, Turkey, U.S.A., Uruguay, Venezuela, Yemen, Afghanistan, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador;

Against: Union of South Africa.

Abstaining: Greece, Paraguay, Poland, Ukrainian S.S.R., U.S.S.R., U.K., Yugoslavia, Argentina, Byelorussian S.S.R., Czechoslovakia.

2. G.A., (V), Annexes, Vol. II, a.i. 57, p. 2, Doc. A/AC.38/L35. This resolution was subsequently withdrawn by India on behalf of the co-sponsors at the 48th mtg. of the Committee.

regulating the residence of the various racial groups in the Union of South Africa, entailed a controversion of the purposes and principles of the Charter and of the Universal Declaration of Human Rights. It also noted that because of this act, resolution 265(III), inviting the Governments of India, Pakistan and the Union of South Africa to negotiate had proved useless. The draft resolution recommended that South Africa take all steps necessary speedily to bring its treatment of people of Indian origin into conformity with the purposes and principles of the Charter and the Universal Declaration of Human Rights.

The other resolution which, as amended, was ultimately adopted by the Committee, was introduced jointly by the delegations of Bolivia, Brazil, Denmark, Norway and Sweden.<sup>1</sup> The text of this resolution was as follows:

The General Assembly,

Recalling its resolutions 44(I) and 265(III) relating to the treatment of people of Indian origin in the Union of South Africa,

Having considered the communication by the permanent representative of India to the Secretary-General dated 10 July 1950,

1. Recommends that the Governments of India, Pakistan and the Union of South Africa proceed, in accordance with the resolution 265(III), with the holding of a round table conference on the basis of their agreed agenda;

2. Recommends that in the event of failure of the Governments concerned to reach an agreement in the aforesaid manner within a reasonable time, they should designate by agreement between them an individual to assist the parties in carrying through appropriate negotiations;

3. Calls upon the Governments concerned to refrain from taking any steps which would prejudice the success of their negotiations.

To this text various amendments were proposed.

Cuba proposed<sup>2</sup> to insert in the preamble a clause to the effect that the policy of racial segregation (Apartheid) was necessarily based on the doctrines of racial discrimination.

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1. *ibid.*, p. 3, Doc. A/AC.39/L.35.

2. *ibid.*, Report of the Ad Hoc Political Committee, Doc.A/1548, p. 3, at p. 4, para. 8.

At the 46 meeting of the Committee, an amendment was introduced on behalf of Ecuador, Mexico, the Philippines and Uruguay, which provided for:<sup>1</sup>

(a) The insertion after the second paragraph of the preamble of an additional paragraph reading:

Having in mind its resolution 105(I) of 19 November 1946 against racial persecution and discrimination, and its resolution 217(III) dated 10 December 1948 relating to the Universal Declaration of Human Rights.

(b) The addition at the end of paragraph 1 of the words "and bearing in mind the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights";

(c) The insertion in paragraph 2, after the words "of the Governments concerned to" of the words "hold a round table conference within a reasonable time or to reach agreement in the round table conference"; and, at the end of the paragraph, the addition of a clause reading "should the parties fail to agree on this designation, he should be appointed, at the request of any of the parties, by the Secretary-General of the United Nations";

(d) The addition, at the end of paragraph 3, of the words "in particular, the implementation or enforcement of the provisions of 'The Group Areas Act' pending the conclusion of such negotiations";

(e) The addition of a new paragraph reading:

Decides to include this item in the agenda for the next regular session of the General Assembly.

The above amendments were accepted by the co-sponsors of the resolution, with the exception of the amendment to paragraph 3.<sup>2</sup>

At the 47 meeting of the Committee the representative of Iraq proposed that

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1. *ibid.*, p. 4, para. 10.

2. *ibid.*, p. 4, para. 12; See also G.A.(V), Ad Hoc Pol.Com., 47th mtg., para. 11.



in paragraph 2, after the words "within a reasonable time" the following should be inserted:<sup>1</sup>

.... there shall be established for the purpose of assisting the parties in carrying through appropriate negotiations a commission of three members, one to be nominated by the Government of the Union of South Africa, another to be nominated by the Governments of India, and Pakistan and the third to be nominated by the other two, or in default of agreement between these two in a reasonable time, by the Secretary-General of the United Nations".

The resolution as ultimately adopted by the Committee read as follows:<sup>2</sup>

The General Assembly

Recalling its resolutions 44(I) and 265(III) relating to the treatment of people of Indian origin in the Union of South Africa,

Having considered the communication of the permanent representative of India to the Secretary-General of the United Nations dated 10 July 1950,

Having in mind its resolution 105(I) of 19 November 1946 against racial persecution and discrimination, and its resolutions 217(III) dated 10 December 1948 relating to the Universal Declaration of Human Rights,

Considering that the policy of 'racial segregation' (Apartheid) is necessarily based on doctrines of racial discrimination,

1. Recommends that the Governments of India, Pakistan and the Union of South Africa proceed in accordance with resolution 265(III), with the holding of a round table conference on the basis of their agreed agenda and bearing in mind the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights;

2. Recommends that, in the event of failure of the Government concerned to hold a Round Table Conference before 1 April 1951 or to reach agreement in the round table conference within a reasonable time there shall be established for the purpose of assisting the parties in carrying through appropriate negotiations a commission of three members, one member to be nominated by the Government of the Union of South Africa, another to be nominated by the Governments of India and Pakistan and the third to be nominated by the other two members or, in default of agreement between these two in a reasonable time, by the Secretary-General;

3. Calls upon the Governments concerned to refrain from taking any steps which would prejudice the success of their

1. G.A.,(V), Annexes, Vol. II, a.i. 57, Report of Ad Hoc Pol.Com., Doc. A/1548, p. 4, para. 12.

2. *ibid*, p. 6.

negotiations, in particular, the implementation or enforcement of the provisions of 'The Group Areas Act' pending the conclusion of such negotiations;

4. Decides to include this item in the agenda of the next regular session of the General Assembly.

The resolution as amended was adopted by the Ad Hoc Political Committee by 26 votes to 6, with 24 abstentions.<sup>1</sup>

(a) The Attitude of States

(1) The Ad Hoc Political Committee

Of the States which voted against or abstained in the vote on the final form of the five power draft resolution, the Netherlands,<sup>2</sup> France,<sup>3</sup> Belgium,<sup>4</sup> Turkey<sup>5</sup> and the United Kingdom<sup>6</sup> expressed their doubts on the competence of the General Assembly to deal with the issue. Belgium<sup>7</sup> and the United Kingdom<sup>8</sup> expressed regret that the question of competence had not been submitted to the International Court, and Denmark<sup>9</sup> and Sweden<sup>10</sup> were also in favour of an

1. G.A., (V), Ad Hoc Pol. Com., 47th mtg., para. 64. The details of voting were as follows:

In favour: Burma, Chile, China, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Philippines, Saudi-Arabia, Syria, Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Greece, Luxembourg, Netherlands, South Africa.

Abstaining: Afghanistan, Argentina, Bolivia, Brazil, Byelorussian S.S.R., Canada, Colombia, Czechoslovakia, Denmark, France, New Zealand, Nicaragua, Norway, Paraguay, Peru, Poland, Sweden, Thailand, Turkey, Ukrainian S.S.R., U.S.S.R., U.K., U.S.A., Venezuela.

2. G.A., (V), Ad Hoc Pol. Com., 45rd mtg., para. 2.

3. *ibid*, para. 46.

4. *ibid*, paras. 51-52.

5. *ibid*, 45th mtg., paras. 34-37.

6. *ibid*, 47th mtg., paras. 13-14.

7. *Loc.cit.*

8. *Loc.Cit.*

9. *ibid*, 44th mtg., paras. 19-23.

10. *ibid*, 45th mtg., para. 1.

advisory opinion on the legal aspects of the matter.

As in the third session, so in this, some states, in particular the Netherlands, France and Australia, made statements regarding the proposals and their legality which are somewhat contradictory of the attitude of hostility to any action by the United Nations concerning the domestic affairs of States, which they assumed in other situations.

The Netherlands, having expressed its doubts on the competence of the United Nations, announced the intention of voting against the draft resolution sponsored by the delegations of India, Burma, Indonesia, and Iraq, because its legality was doubtful, and also because it was considered politically unsatisfactory.

By doubting the legality of the four-power draft resolution, the Netherlands must have intended to indicate that, in her opinion, it perilously approached intervention. Yet, no sooner had the Netherlands indicated her objections to the four-power draft resolution than she announced her intention of voting in favour of the original terms of the five-power draft. Thus, plainly, the Netherlands was here drawing some distinction between various forms of recommendations. She did not maintain that as there was some doubt as to the competence of the Assembly, all recommendations were illegal pending a resolution of the competency question, but was prepared to accept some kind of recommendation.

This is made abundantly clear by the attitude which the Netherlands adopted towards the various amendments which were proposed to the five-power draft. The Netherlands announced that if the amendments proposed by the delegations of Ecuador, Mexico, the Philippines and Uruguay were adopted, she would oppose the resultant resolution, because in her opinion, the amendments to paragraphs 2 and 3 were clear cases of intervention.

The actions of the Netherlands in the fifth session, in differentiating between types of recommendations, are similar to those of that State at the third session. At the third session, she not only expressed her doubts on the competence of the General Assembly to deal with the question, but voted in favour of the South African resolution denying competence. But having voted in favour of the South African draft, she then proceeded to vote in favour of the Franco-Mexican resolution.

Clearly, the practice of this State at these two sessions indicates acceptance in practice of some modified definition of intervention.

The position adopted by the French delegation was similar. France also doubted the competence of the General Assembly and, as the Netherlands had done, declared her intention of voting against the proposed amendments to paragraph 5 of the five-power draft resolution. The French delegate said that he considered that the General Assembly could not call on the Government of the Union of South Africa to refrain from implementing a specific law, since in doing so it would be intervening in a matter which was not within its competence.<sup>1</sup>

Turkey, likewise objected to the proposed amendment to paragraph 5 of the five-power draft resolution,<sup>2</sup> a fact which acquires a significance when compared with her vote in favour of the Franco-Mexican draft at the third session.

(ii) The Plenary Session.

In the Ad Hoc Political Committee, the Australian representative said that, in the opinion of his delegation, the Committee would be acting contrary to

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1. *ibid*, 47th mtg., para. 10.

2. *ibid*, para. 20.

Article 2, paragraph 7 if it discussed this matter. There might be, he said, cases where the United Nations was entitled to discuss and adopt resolutions with a view to the conciliation of a dispute. But, in this case, as the Government of the Union of South Africa had indicated its readiness to resume negotiations with India, the United Nations could not, under Article 2, paragraph 7, deal with the matter without being invited to do so by the parties.<sup>1</sup> However, in the plenary session, Mr. Tange, the Australian representative said:<sup>2</sup>

... The Australian delegation expressed the view from the outset that action on this matter by the Assembly would represent an infringement of Article 2, paragraph 7, of the Charter, and was therefore outside the competence of the General Assembly.

.... It had based its attitude on the opinion that the Assembly had been called upon to make recommendations which constituted interference with matters essentially within the domestic jurisdiction of the Government of the Union of South Africa.

I should like at this time, to state that had the draft resolution submitted to the Ad Hoc Political Committee by the delegations of Bolivia, Brazil, Denmark, Norway and Sweden come to the vote in the Committee in its original form, the Australian delegation - while maintaining its attitude on the question of competence - would not have opposed the adoption of that draft resolution by the General Assembly. In the view of the Australian delegation, that joint draft resolution represented a reasoned and constructive attempt to settle the question with the least friction possible.

Australia was plainly trying here to have the best of both worlds. On the one hand she claimed that the Assembly was incompetent even to discuss the matter, and on the other, indicated her intention to tacitly accept a certain type of recommendation. Of course, she took care to expressly reserve her

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1. *ibid*, 42nd mtg., para. 41.

2. *ibid*, Plen., 315th mtg., paras. 24-26.

own stand on the question of competence. But what value can be attached to actions of this kind? All they amount to is a formal acceptance of one approach while in practice doing something entirely different. The Australian delegate may as well have said that while he thought that a certain course of action was illegal he would do it anyway.

Such statements and actions are plainly contradictory unless Australia in practice accepted that irrespective of the nature of a matter, some kind of United Nations action was competent.

The amended five-power draft resolution was adopted by the plenary session by 35 votes to 6, with 21 abstentions.<sup>1</sup>

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1. *ibid*, para. 51; Res. 395(V). The details of voting were as follows:

In favour: Bolivia, Burma, Chile, China, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Panama, Philippines, Saudi-Arabia, Syria, Thailand, U.S.A. Uruguay, Yemen, Yugoslavia, Afghanistan.

Against: Australia, Belgium, Greece, Luxembourg, Netherlands, Union of South Africa.

Abstaining: Brazil, Byelorussian S.S.R., Canada, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, France, New Zealand, Norway, Paraguay, Peru, Poland, Sweden, Turkey, Ukrainian S.S.R., U.S.S.R., U.K., Venezuela, Argentina.

It should be noted also that of the five sponsors of the original resolution, Brazil, Denmark, Norway and Sweden all abstained in this vote. It does not appear, however, that any of them stressed the domestic nature of this item and so no definite conclusions can be drawn from their abstention. It may be, however, that their objections, particularly to paragraph 5 of the amended draft, were political; see for example, the statement of Brazil - *loc.cit.*, 47th mtg., para. 65. (Although Brazil had voted in favour of the South African motion denying the competence of the General Assembly at the third session, at the fifth session she was of the opinion that the question of competence had lost its importance; see *ibid*, 44th mtg., para. 16).

### 5. The Sixth Session.

At the sixth session, several States continued to express their doubts on the Assembly's competence. Brazil reserved her position on those parts of the proposed resolution which referred to the domestic legislation of the Union of South Africa,<sup>1</sup> while Sweden,<sup>2</sup> the United Kingdom,<sup>3</sup> the Netherlands,<sup>4</sup> and New Zealand<sup>5</sup> again expressed support for an advisory opinion from the International Court of Justice on the question of the competence of the United Nations.

The delegations of Burma, India, Indonesia, Iran and Iraq jointly introduced a resolution<sup>6</sup> which, as amended, was ultimately adopted by the Ad Hoc Political Committee<sup>7</sup> and the plenary session.<sup>8</sup> The final text of the

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1. G.A., (VI), Ad Hoc Pol.Com., 28th mtg., para. 38; and cf. her statements on competence at the 5th session; see supra. p. 90 fn. 1.

2. *ibid.*, 30th mtg., paras. 1-2.

3. *ibid.*, 32nd mtg., para. 26.

4. *ibid.*, para. 27.

5. *ibid.*, para. 33.

6. G.A., (VI), Ad Hoc Pol.Com., 27th mtg., para. 55.

7. *ibid.*, 32nd mtg., para. 50; 41 votes in favour, 2 against, 13 abstentions.

8. *ibid.*, Plen., 360th mtg., para. 35; 44 votes in favour, none against, 14 abstentions, the details of which are as follows:

In favour: Syria, Thailand, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, China, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi-Arabia.

Against: None.

Abstaining: Sweden, Turkey, U.K., Venezuela, Argentina, Australia, Belgium, Canada, Denmark, France, Greece, Luxembourg, Netherlands, New Zealand.

resolution read as follows:<sup>1</sup>

The General Assembly,

Recalling its resolutions 44(I), 265(III), and 395(V) relating to the treatment of people of Indian origin in the Union of South Africa,

Having considered that the Government of the Union of South Africa has been unable up to the present time to accept General Assembly resolution 395(V) as a basis for a round-table conference,

Noting that the promulgation on 30 March 1951 of five proclamations under the Group Areas Act renders operative the provisions of that Act in direct contravention of paragraph 3 of resolution 395(V),

Having in mind its resolution 105(I) of 19 November 1946 against racial persecution and discrimination, and its resolution 217(III) of 10 December 1948 relating to the Universal Declaration of Human Rights,

Considering that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

1. Recommends that a commission of three members be established for the purpose of assisting the parties, namely the Governments of India, Pakistan and the Union of South Africa, in carrying through appropriate negotiations, the said commission to be composed of one member to be nominated by the Government of the Union of South Africa, another to be nominated by the Governments of India and Pakistan and the third to be nominated by the other two members or, in default of agreement between these two within a reasonable time, by the Secretary-General;

2. Calls upon the Governments of the Union of South Africa, India and Pakistan to nominate members within sixty days from the date of adoption of the present resolution;

3. Requests the Secretary-General, in the event that the members of the Commission are not nominated in accordance with paragraphs 1 and 2 above, to lend his assistance to the Governments of India, Pakistan and the Union of South Africa, provided such assistance is deemed necessary and helpful by him, with a view to facilitating appropriate negotiations between them; and further, in his discretion and after consulting the Governments concerned, to appoint an individual who would render such assistance for the purpose of facilitating the conduct of the said negotiations;

4. Calls upon the Government of the Union of South Africa to suspend the implementation or enforcement of the Group Areas Act pending the conclusion of the negotiations;

5. Decides to include this item in the agenda of the next regular session of the General Assembly.

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1. G.A., (VI), Supplement No. 20, Resolutions Adopted by the General Assembly, during its Sixth Session, p. 11; Res. 511(VI).



(a) The Attitude of States.

Statements of Members of the United Nations concerning these delicate questions of law are frequently not too explicit, and it is, as a result, not too easy to state with certainty what opinions they do in fact hold.

Throughout the treatment of this subject, it has become noticeable that while many States opposed intervention in the domestic affairs of another, they did not necessarily oppose all recommendations on those subjects. This has been seen to be the case with even the most ardent opponents of intervention, for even they have been prepared to vote for a recommendation which calls on the States concerned to negotiate on their differences. However, apart from indicating their general support for such resolutions, it was not till the fifth and sixth sessions that a clearer explanation was given of this differentiation between various types of recommendations. From these sessions, it emerges that States opposing intervention object to recommendations which made specific 'requests' on a State regarding its domestic policy, administration or legislation.

In the fifth session, it has already been seen that the Netherlands, France and Turkey objected to the specific request to South Africa to suspend the implementation of the Group Areas Act. At the sixth session, similar objections were heard, but at the same time states making such objections declared themselves prepared to accept a more general recommendation.

The Netherlands remarked that there was no certainty as to the competence of the General Assembly to request the Union of South Africa to suspend the implementation of a particular law.<sup>1</sup>

The Australian delegation took similar exception to paragraph 4 of the resolution, but did not rule out all recommendations. The Australian

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1. G.A., (VI), Ad Hoc Pol.Com., 32nd mtg., para. 28.

delegate, Mr. Tange, said that:<sup>1</sup>

.....adhering to the position taken by his delegation at the previous session on the question of competence, he would vote against the draft resolution before the Committee. Were it put to the vote paragraph by paragraph, he would not vote against the whole of it, since his main objection was to the general tendency it reflected of making the United Nations intervene in matters that were essentially within the domestic jurisdiction of States; in the case in point, that tendency was expressed by a recommendation calling upon a State to suspend enforcement of its national legislation. ....

In the opinion of the Australian Government, however, existing international instruments did not authorize the United Nations to impose upon the parties the conditions in which negotiations should be held. Moreover, there were other avenues of negotiations. .... it was precisely because his Government was anxious for negotiations to be resumed that it would prefer the adoption of a resolution encouraging the parties to negotiate rather than a text condemning one of them.

In the plenary session the Australian delegate, Sir Keith Officer, repeated the objections of his government to the proposed resolution and added that Australia would not object to a resolution devoted to the "encouragement of the parties instead of implicitly condemning one party and also, in our view, intervening in its domestic affairs."<sup>2</sup>

France opposed part of this resolution for similar reasons. The French delegate said that France opposed paragraph 4 of the operative part because the specific reference to a national law in that paragraph appeared to encroach too obviously upon the sphere of domestic jurisdiction.<sup>3</sup> The French delegation did not oppose the rest of the resolution, so presumably, though again this is not stated so explicitly, she must have considered it to be in conformity with the

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1. *ibid*, paras. 22-23.

2. *ibid*, Plen., 360th mtg., paras. 18-20.

3. *ibid*, Ad Hoc Pol.Com., 32nd mtg., para. 51.

provisions of the Charter and, in particular, with Article 2, paragraph 7.

6. The Seventh Session.

The objections voiced at earlier sessions to the adoption of recommendations which issued specific directives to South Africa concerning its national legislation, were very noticeable at the seventh session.

The Secretary-General reported to the seventh session of the General Assembly on the developments since the adoption of resolution 511(VI). He declared that after the failure of the parties concerned to nominate the members of the proposed commission in accordance with paragraph 2 of that resolution, consultations with the representatives of all three Governments concerned and with those of other Governments had forced him to the conclusion that there was at that time no possible solution to the problem and that, consequently, the appointment of the individual under the terms of its third paragraph was not opportune.<sup>1</sup>

In a further attempt to arrive at some solution of the problem, yet another resolution was introduced jointly by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi-Arabia, Syria, Thailand and the Yemen. The text of the resolution was as follows:<sup>2</sup>

The General Assembly,

Recalling its resolutions 44(I), 265(III) and 511(VI) relating to the treatment of people of Indian origin in the Union of South Africa,

Noting that the Government of the Union of South Africa has expressed its inability to accept General Assembly resolution 511(VI) in respect of the resumption of negotiations with the Governments of India and Pakistan,

Noting further that the Government of the Union of South Africa has continued to enforce the Group Areas Act in contravention of the terms of General Assembly resolution 511(VI) and 395(V),

1. Establishes a United Nations Good Offices Commission consisting of .....members to be nominated by the President

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1. G.A., (VII), Annexes, Vol. I, a.i. 22, p. 4, Doc. A/2257, Report of the Ad Hoc Political Committee, paragraph 2.

2. *ibid*, p. 4, para. 6.

of the General Assembly, with a view to arranging and assisting in negotiations between the Governments of the Union of South Africa and the Governments of India and Pakistan in order that a satisfactory solution of the question in accordance with the Principles and Purposes of the Charter and the Universal Declaration of Human Rights may be achieved;

2. Requests the Good Offices Commission to report to the General Assembly at its eighth regular session;

3. Requests the Secretary-General to provide the members of the Commission with the necessary staff and facilities;

4. Calls upon the Government of the Union of South Africa to suspend the implementation or enforcement of the provisions of the Group Areas Act pending the conclusion of the negotiations referred to in paragraph 1 above;

5. Decides to include the item in the agenda of the next regular session of the General Assembly.

In the debates on this proposed resolution several delegates objected to paragraph 3 of the preamble and to paragraph 4 of the operative part. As before, States differentiated between the terms of the resolution, accepting some and objecting to others on the grounds they would constitute an intervention in the domestic affairs of the State concerned.

Australia declared that the United Nations was completely incompetent in this matter, an attitude not in harmony with her previous action.<sup>1</sup> Brazil indicated her intention to abstain from voting on paragraph 3 of the preamble and paragraph 4 of the operative part.<sup>2</sup> New Zealand expressed doubts on the competence of the United Nations and again supported the idea of an advisory opinion from the International Court. The New Zealand delegate went on to state that in his opinion, to call upon the South African Government to suspend its internal legislation was an intrusion into the domestic affairs of South Africa.<sup>3</sup> Likewise France declared her intention of voting against paragraph

1. G.A., (VII), Ad Hoc Pol.Com., 10th mtg., paras. 13-16.

2. *ibid*, para. 29.

3. *ibid*, paras 52-53.

4 of the operative part as it constituted an interference in South Africa's domestic affairs.<sup>1</sup> Belgium, like New Zealand, also supported the idea of an advisory opinion from the International Court on the question of competence, and in the meantime declared her intention of voting against paragraph 4 of the operative part for the same reasons as the other states.<sup>2</sup> The United Kingdom took a similar position.<sup>3</sup> Argentina stated that while she would support any measure "calculated to achieve settlement of the question" she would oppose the two paragraphs in point, because they concerned matters within South Africa's domestic jurisdiction,<sup>4</sup> Colombia,<sup>5</sup> Ecuador<sup>6</sup> and Turkey<sup>7</sup> all adopted similar positions.

Despite these objections to the two specified paragraphs however, the whole resolution was adopted by the plenary session by 41 votes to 1, with 15 abstentions.<sup>8</sup>

#### 7. The Eighth Session.

The Ad Hoc Political Committee recommended the following resolution to the General Assembly:<sup>9</sup>

The General Assembly,

1. Recalls that at its first, second, third, fifth, sixth and

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1. *ibid*, paras. 60-61.

2. *ibid*, 11th mtg., paras. 5-9.

3. *ibid*, paras. 20-21.

4. *ibid*, 37-40.

5. *ibid*, 12th mtg., para. 18.

6. *ibid*, para. 24.

7. *ibid*, para. 27.

8. *ibid*, Plen., 401st mtg., para. 69.

9. G.A., (VIII), Annexes, a.i. 20, p. 6, Report of the Ad Hoc Pol.Com., Doc. A/2532, para. 6, and 9; Res. 719(VIII).

seventh sessions, it had given consideration to the question of the treatment of people of Indian origin in the Union of South Africa;

2. Further recalls

(a) That resolution 44(I) of 8 December 1946 expressed the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the Governments of India and the Union of South Africa and the relevant provisions of the Charter and requested the two Governments to report to the General Assembly on the measures adopted to this effect;

(b) That resolution 265(III) of 14 May 1949 invited the Governments of India, Pakistan and the Union of South Africa to enter into discussions at a round table conference taking into consideration the Purposes and Principles of the Charter and the Universal Declaration of Human Rights;

(c) That resolution 395(V) of 2 December 1950 held that a policy of 'racial segregation' (apartheid) was necessarily based on doctrines of racial discrimination; repeated the recommendation that a round table conference be held; and further recommended that in the event of failure to hold a conference or reach agreement thereat, a commission of three members be set up to assist the parties in carrying through appropriate negotiations;

(d) That resolution 511(VI) of 12 January 1952 reaffirmed the recommendation of resolution 395(V) that a three member commission be established and further requested the Secretary-General, in the event of failure to establish such a commission to lend his assistance to the governments concerned and if necessary to appoint an individual who would render any additional assistance deemed advisable;

(e) That resolution 615(VII) of 5 December 1952 established a three member United Nations Good Offices Commission to arrange and assist in negotiations between the Governments concerned in order that a satisfactory solution in accordance with the Purposes and Principles of the Charter and the Universal Declaration of Human Rights might be achieved;

3. Also recalls that resolutions 395(V), 511(VI) and 615(VII) successively called upon the Government of the Union of South Africa to refrain from implementing or enforcing the Group Areas Act;

4. Takes note of the report of the Good Offices Commission (A/2473), and in particular its conclusion that 'in view of the response of the Government of the Union of South Africa, it has been unable to carry out its task to arrange and assist in negotiations between the Governments concerned';

5. Expresses its regret that the Government of the Union of South Africa:

(a) Has refused to make use of the Commission's good offices or to utilize any of the alternative procedures for the settlement of the problem recommended by the four previous resolutions of the General Assembly;

(b) Has continued to implement the provisions of the Group Areas Act in spite of the three previous resolutions, and

(c) Is proceeding with further legislation contrary to the Charter and the Universal Declaration of Human Rights including the Immigrants Regulation Amendment Bill which seeks to prohibit the entry into South Africa of wives and children of South African nationals of Indian origin;

6. Considers that these actions of the Government of the Union of South Africa are not in keeping with its obligations and responsibilities under the Charter of the United Nations;

7. Decides to continue the Good Offices Commission and urges the Government of the Union of South Africa to co-operate with that Commission;

8. Requests the Commission to report to the General Assembly at its next regular session the extent of progress achieved, together with its own views on the problem and any proposals which, in its opinion, may lead to a peaceful settlement of it;

9. Again calls upon the Government of the Union of South Africa to refrain from implementing the provisions of the Group Areas Act;

10. Decides to include this item in the provisional agenda for the ninth session of the General Assembly.

This resolution was adopted by the Ad Hoc Political Committee by 53 votes to 2, with 19 abstentions,<sup>1</sup> and by the plenary session by 42 votes to 1, with 17 abstentions.<sup>2</sup>

1. G.A., (VIII), Ad Hoc Pol. Com., 21st mtg., para. 46. The details of voting were as follows:

In favour: Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Paraguay, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, China, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq.

Against: Union of South Africa, Greece.

Abstaining: Israel, Luxembourg, Netherlands, New Zealand, Norway, Peru, Sweden, Turkey, U.K., Venezuela, Argentine, Australia, Belgium, Canada, Dominican Republic, Denmark, Colombia, France, Ireland.

2. ibid, Plen., 457th mtg., paras. 92-95. The details of voting were as follows:

In favour: Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, China, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico.

Against: South Africa.

Abstaining: Norway, Sweden, Turkey, U.K., Venezuela, Argentina, Australia, Belgium, Canada, Colombia, Denmark, Dominican Republic, France, Greece, Luxembourg, Netherlands, New Zealand.

In the debate in the Ad Hoc Political Committee<sup>1</sup> the tendency of several States to distinguish between the clauses of a recommendation, supporting some and objecting to others on the ground that they constituted intervention, is again evident. Again, States which, in other circumstances, have taken a rigid attitude towards the question of recommendations and intervention, here appeared to be willing to accept recommendations addressed directly to South Africa or concerning her domestic affairs which were of a more general nature but vigorously objected to recommendations of a specific nature, which they considered to constitute intervention in that State's domestic affairs.

Explaining the position of France on this draft resolution, the French delegate, Mr. Lucet said that:<sup>2</sup>

The French delegation believed that the method best suited to achieve a speedy and effective solution was that of direct negotiations between the parties, which would be free to proceed and act as they wished. It continued to believe that the General Assembly, so far as it was authorized to act, should do nothing more than adopt a very simple resolution inviting the Governments of India and South Africa to seek an amicable solution.

Instead of a proposal of that kind, India and sixteen other States had submitted a draft resolution which was a veritable patchwork of considerations, judgements, invitations and even demands. The entire first part, instead of seeking a fresh approach for the future, merely bogged the question down in the old morass. The draft resolution passed censure on the reasons underlying the South African Government's domestic legislation and on the enforcement of that legislation. It complained that the Government had not resorted to the Good Offices Commission even though the Commission was necessarily only an advisory body and to have recourse to it was optional. Those demands and censures constituted blatant interference in South Africa's domestic affairs and his delegation, as in the previous year, could not support them.

Later in the same debate, Mr. Lucet gave details of his delegation's opinion of specific clauses in the draft resolution. He said that:<sup>3</sup>

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1. The Plenary Session decided not to discuss the report of the Committee on this subject, *ibid.*
  2. G.A., (VIII), Ad Hoc Pol. Com., 14th mtg., paras. 51-52; emphasis added.
  3. *ibid.*, 20th mtg., para. 14.



He would be able to support only paragraph 1 and paragraph 2, sub-paragraph (a) and (b) which referred to General Assembly resolutions 44(I) and 265(III) of 1946 and 1949, the only two in which the Assembly had confined itself to recommending direct consultations between the parties. He would abstain on the other sub-paragraphs of paragraph 2 which referred to resolution 395(V), 511(VI) and 615(VII) as well as on paragraphs 4 and 7. He would vote against all other paragraphs because they represented intervention in South Africa's domestic affairs and would abstain in the vote on the draft resolution as a whole.

The stands taken by the Netherlands, Australia, Brazil, Argentina and Greece were similar.<sup>1</sup> Likewise while Sweden accepted the constitutionality

1. The representative of the Netherlands stated that: (ibid, 16th mtg., para. 5)

"...Being traditionally a country of asylum and abhorring any form of discrimination, it sometimes had difficulty in understanding the racial policy that was the origin of the problem under discussion. Nevertheless, even though the Netherlands delegation considered that the Assembly should not refuse to discuss an issue connected with one of the basic principles of the Charter, it could not support the joint draft resolution (A/AC.72/L.10) because it very much doubted whether the United Nations had the right to demand that a Member State alter its legislation."

The Australian delegate said that: (ibid, 18th mtg., para. 24).

"Under the Charter the United Nations was excluded from intervening in matters which were essentially within the domestic jurisdiction of States. It could not issue directives to States concerning the conduct of their domestic legislation."

The Brazilian delegate said that (ibid, 19th mtg., paras. 24-32) he doubted the validity of the South African objections on competence, but added that this matter could still be settled by an advisory opinion from the International Court. However, later on he said that (ibid, 22nd mtg., para. 6) while he had voted for the resolution as a whole, to show his country's disapproval of South African policy, he had voted against references to South African legislation because he continued to doubt their propriety under the Charter. In particular, he had voted against paragraph 5(c) because questions of immigration were, in his opinion, essentially within domestic jurisdiction, and his affirmative vote for the whole draft had been cast without prejudice to that view.

The Argentinian representative said that: (ibid, 22nd mtg., para. 5).

"... consistent with its position in the past and without departing from its stand on the question of non-intervention in domestic affairs, his Government had been prepared to vote in favour of the continuation of the Good Offices Commission. He voted against paragraphs 5 and 6 because they were not likely to facilitate the task of the Commission and because paragraph 5, sub-paragraph (c), infringed the limitation laid down in Article 2, paragraph 7, of the Charter."

In the same vein, the representative of Greece said: (ibid, 20th mtg., para. 15)

of general recommendations addressed to South Africa, she could not accept the legality of any specific references to particular South African laws.<sup>1</sup>

Turkey expressed her doubts on competence<sup>2</sup> and while Ecuador in general regarded this as a non-domestic matter, she nevertheless placed on record her reservations regarding paragraphs 5, 5 (b) and (c), and 9.<sup>3</sup>

#### 8. The Ninth Session.

At the ninth session, the General Assembly decided not to continue the Good Offices Commission and adopted a recommendation which simply called upon the parties to enter into direct negotiations. This resolution, sponsored by the delegations of Argentina, Brazil, Cuba, Ecuador, El Salvador, Haiti, Honduras, and eventually also by Costa Rica, after an amendment by India,

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#### Fn.1 contd. from p.101.

".....he would vote in favour of paragraphs 1, 2 and 3 of the joint draft resolution. He would abstain on paragraphs 4, 5 and 6. ....Greece shared the doubts expressed as to whether the resolutions of the Assembly on the subject were constitutional. For that reason, and because continued application of a method which had already failed, namely, the Good Offices Commission, was not likely to succeed in bringing about a solution, Greece would vote against paragraphs 7 to 10. Finally, it could not endorse the text as a whole. Its adoption would be based on an erroneous interpretation of a fundamental provision of the Charter; Article 2, paragraph 7."

1. *ibid*, 22nd mtg., para. 8, where the Swedish delegate said that he had abstained from voting on:  
 "those passages of the draft resolution which specifically referred to South African legislation because, while general recommendations were acceptable, his delegation thought it unwise to express judgement on such specific legislation in a matter where the extent of the United Nations competence was still open to question."
2. *ibid*, 20th mtg., para. 20.
3. *ibid*, 14th mtg., paras. 19-26; *ibid*, 22nd mtg., paras. 4-5. The United Kingdom, at this session, even doubted the competence of the General Assembly to discuss the matter, *ibid*, 17th mtg., para. 30; of her attitude in the third session.

accepted by the co-sponsors, read as follows:<sup>1</sup>

The General Assembly,

Recalling that at several sessions it has considered the question of the treatment of people of Indian origin in the Union of South Africa and has adopted resolutions on that subject,

Having noted the report of the United Nations Good Offices Commission (A/2725),

1. Expresses appreciation of the work and efforts of the Good Offices Commission;

2. Suggests to the Governments of India, Pakistan and the Union of South Africa that they should seek a solution of the question by direct negotiations;

3. Suggests, moreover, that the parties should designate a Government, agency or person to facilitate contacts between them and assist them in settling the dispute;

4. Decides that, if within the next six months following the date of the present resolution the parties have not reached agreement on the suggestions made in the foregoing paragraphs, the Secretary-General shall designate a person for the purposes specified above;

5. Requests the Secretary-General to report to the General Assembly at its next regular session on the results obtained.

In the Ad Hoc Political Committee, this resolution was adopted by 47 votes to 1, with 10 abstentions,<sup>2</sup> and in the plenary session by 45 votes to 1, with 11 abstentions.<sup>3</sup>

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1. G.A., (IX), Annexes, a.i.22, Res. 816(IX), p. 5.

2. G.A., (IX), Ad Hoc Pol.Com., 16th mtg., para. 30. The details of voting were as follows:

In Favour: China, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile.

Against: Union of South Africa

Abstaining: Colombia, Dominican Republic, France, Netherlands, New Zealand, Turkey, U.K., Australia, Belgium, Canada.

3. *ibid*, Plen., 497th mtg., para. 198. The Assembly decided not to discuss the report of the Ad Hoc Political Committee; *ibid*. There was no roll-call vote.

Although this resolution in many ways resembles those of the first three sessions, in that it only called for direct negotiations between the parties, several States still objected to it and as a result abstained in the final vote.

Despite the seeming innocuousness of this draft resolution, several States still held that some parts of it constituted intervention in the domestic affairs of South Africa, or at least were of doubtful legal validity. Here, as in other sessions, there is found the same tendency to separate the clauses which were felt to be illegal, from those which were accepted. Even States which accepted the whole resolution were at pains to explain why they did so and why they felt that none of the clauses thereof amounted to intervention in the domestic affairs of the Union of South Africa.

The delegation of Ecuador, although it believed that Article 2(7) was not relevant to this discussion, nevertheless maintained that in any case the draft resolution did not in any way impair the sovereignty of States. It merely advocated direct negotiations between the parties and only contemplated activity by the Secretary-General as a secondary possibility.<sup>1</sup>

On behalf of Brazil Mr. de Souza Gomes said that it was difficult, if not impossible, to determine a priori whether the United Nations was competent to deal with a question which, prima facie, was of an international character. Member States, he maintained, could not pass an opinion on the subject until they had before them a specific proposal. In the present case he felt that the General Assembly could discuss the item without violating any provisions of the Charter and could adopt any resolution which did not infringe the domestic jurisdiction of a Member State.<sup>2</sup> Mr. de Souza Gomes went on to

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1. G.A., (IX), Ad Hoc Pol.Com., 10th mtg., para. 13.

2. *ibid*, paras. 15-18.

indicate his support for the proposed draft, and it is inherent in his treatment that, in his opinion, none of the terms of this resolution did infringe that domestic jurisdiction.

Other delegations, however, did not share the opinions of the sponsors on this question of intervention.

Belgium continued to doubt the competence of the United Nations to act on this subject and still bemoaned the lack of an advisory opinion on the subject of competence from the International Court of Justice. Being doubtful on the question of competence, but without specifying any particular clause to which she objected, Belgium declared her intention to abstain.<sup>1</sup>

While Belgium seemed to object to the whole resolution, Colombia, on the other hand, accepted it in part, although she had reservations about the competence to adopt paragraph 3 of the operative part. The Colombian delegate, Mr. Canal Rivas, said that:<sup>2</sup>

... his delegation had not often taken part in a question which might be construed as involving the domestic jurisdiction of a Member State and on that ground had always abstained. He felt, however, that the dispute had taken a fresh turn, thanks to the spirit of the joint draft resolution, which appealed to the parties to reach a peaceful solution by direct negotiations and reminded them of their duty to find a solution which, without invading their sovereignty, would respect the rights of others.

His delegation therefore agreed in principle with the purpose of the draft resolution, and would support operative paragraphs 1 and 2. It would support paragraph 3, which might involve a question of domestic jurisdiction, only if all the parties concerned in the dispute agreed to its inclusion because there would then be no question of violating domestic jurisdiction.

France also abstained in the final vote in Committee on this draft. Although she herself had been the co-sponsor of similar resolutions at

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1. *ibid*, 12th mtg., paras. 6-8.

2. *ibid*, 13th mtg., paras. 46-47.

other sessions, she objected to operative paragraph 3 of the present draft.

The French delegate, Mr. Lucet, said that:<sup>1</sup>

The joint draft resolution was an improvement on previous attempts, and he was glad to note that it contained no condemnatory language. However, it still maintained the principle that the United Nations was competent to suggest a means of settlement, and he took exception to paragraph 3,<sup>2</sup> in which all caution had been abandoned by formally instructing the Secretary-General to appoint an intermediary to speed a solution of the problem if negotiations proved unsuccessful.....

His delegation had always felt doubt as to the competence of the United Nations in the matter and he could not agree with the idea that the direct negotiations suggested in the draft resolution should be undertaken within the framework of the United Nations, particularly in view of the South African Government's refusal to accept that procedure. ....

In the view of the French delegation, well meaning resolutions continued to be superfluous when United Nations competence was not established. ....

However, though Mr. Lucet objected to this particular resolution because it seemed to impose conditions on South Africa, it is clear that he would not have objected to a recommendation which limited itself to calling for such direct negotiations, but which refrained from imposing conditions on any of the parties, and which did not intrude the personality of the United Nations into the affair, any more, that is, than was necessary in the first place to make the request for a resumption of negotiations.

The Netherlands, on this occasion, again maintained that the issue of competence was in doubt, and declared her intention to abstain.<sup>3</sup>

New Zealand voiced objections similar to those of France. On behalf of

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1. *ibid*, 14th mtg., paras. 55-59.

2. Paragraph 3 of the draft resolution referred to here became paragraph 4 in the final form.

3. *ibid*, paras. 40-45.

that country Mr. Shanahan said that:<sup>1</sup>

.....the absence of a solution was not due to the lack of diligence on the part of the Good Offices Commission. He restated the serious doubts of his delegation on competence and its regret that the Assembly did not at the outset seek the assistance of the International Court of Justice. Because of its doubts his delegation could not support any resolution which judged the substance of the question. He could not subscribe to the argument that the actions of the previous sessions had resolved the issue of competence.

.....

He would accordingly vote for paragraph 1 of the operative part but abstain on paragraph 2 because his delegation thought that it would be preferable to leave the question of outside assistance to the parties. He would vote against paragraphs 3 and 4 which went beyond the proper scope of Assembly action and were likely to hinder the effective solution of the problem.<sup>2</sup>

Australia, for the same reasons, indicated that while she would vote for paragraph 2 of the operative part, she would oppose paragraphs 4 and 5.<sup>3</sup>

The United Kingdom delegate, Lord Fairfax, said that his delegation welcomed the spirit of conciliation shown in the joint draft resolution but maintained, nevertheless, that the question was within the domestic jurisdiction of South Africa. However, he endorsed the principle of direct negotiations but could not vote for any resolution which asserted the competence of the United Nations or recommended United Nations action.<sup>4</sup>

Canada stated her intention to vote in favour of paragraph 2 of the resolution but intended, Mr. Weaver, the Canadian delegate, said to abstain on the other clauses of the draft, because of doubts which his country entertained on

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1. *ibid*, paras. 46-48.

2. Paragraph 1, referred to, is numbered paragraph 2 in the final form of the resolution; paragraph 2 became paragraph 3; paragraph 3 became paragraph 4; and paragraph 4 became paragraph 5.

3. *ibid*, paras. 49-51.

4. *ibid*, para. 53.

the competence of the Organization.<sup>1</sup>

9. The Tenth Session.

At the tenth session the General Assembly adopted the following resolutions, sponsored by the delegations of Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Haiti, Honduras, and Yugoslavia.<sup>2</sup>

The General Assembly,

Having considered the report of the Secretary-General relating to the question of the treatment of people of Indian origin in the Union of South Africa, submitted pursuant to General Assembly resolution 816(IX) of 4 November 1954,

1. Notes that the negotiations envisaged in resolution 816(IX) have not been pursued;
2. Urges the parties concerned to pursue negotiations with a view to bringing about a settlement of the question of the treatment of people of Indian origin in the Union of South Africa;
5. Invites the parties to report as appropriate jointly or separately, to the General Assembly at its next session.

In Committee this resolution was adopted by 45 votes to 0, with 8 abstentions.<sup>3</sup> South Africa did not take part in the voting.<sup>4</sup> The plenary session adopted the recommendation/

1. *ibid*, 15th mtg., paras. 1-5.

2. G.A.,(X), Annexes, a.i. 20, p. 7, Doc. A/360; Res. 919(X).

3. G.A.,(X), Ad Hoc Pol.Com., 54th mtg., para. 44. The details of voting were as follows:

In favour: U.S.A., Yemen, Yugoslavia, Afghanistan, Argentina, Bolivia, Brazil, Burma, Canada, Chile, China, Costa Rica, Cuba, Czechoslovakia, Denmark, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Thailand, Turkey, U.S.S.R.

Against: None

Abstaining: U.K., Australia, Belgium, Colombia, France, Luxembourg, Netherlands, New Zealand.

4. *ibid*, Ad Hoc Pol.Com., 54th mtg., para. 44.



by 46 votes to 0 , with 8 abstentions.<sup>1</sup>

10. Eleventh, Twelfth and Thirteenth Sessions.

As the debates on this subject dragged on year after year, it became apparent that interest in the question of competence diminished. The great majority of States which took part in these debates stated that, in their opinion, the matter was not within the domestic jurisdiction of South Africa or implied that they held this view. As a result the need to explain why a certain delegation supported some part of a resolution ceased to exist. Compared to the earlier debates on this subject, there was in these three sessions a conspicuous lack of concern with the question of intervention. There were, however, one or two notable exceptions to this which renders these debates of importance for the present purpose.

(a) The Eleventh Session.

On the recommendation of the Special Political Committee, the General Assembly, without debate, adopted the following resolution on the subject:<sup>2</sup>

- The General Assembly,  
Recalling its resolution 919(X) of 14 December 1955,  
Having considered the reports of the Governments of India (A/5186) and Pakistan (A/5188),
1. Notes that the Governments of both India and Pakistan have reiterated their readiness to pursue negotiations with the Government of the Union of South Africa, in accordance with the expressed desires of the United Nations;
  2. Notes with regret that the Government of the Union of South Africa has not yet agreed to such negotiations;
  3. Urges the parties concerned to enter into negotiations to facilitate a settlement of the problem of the treatment of people of Indian origin in the Union of South Africa, and, more particularly, appeals to the Government of the Union of South Africa to co-operate to this end;
  4. Recalls also its resolution 926(X) of 14 December 1955, which provides a unified programme under the name of 'advisory services in the field of human rights';

1. *ibid*, Plen., 554th mtg., para. 7. No roll-call was taken.

2. G.A., (XI), Plen., Vol. II, 648th mtg., para. 1; Res. 1015(XI); for the text, see *ibid*, Annexes, a.i. 24, p. 5, Doc. A/Res./458.

5. Invites the parties to report as appropriate, jointly or separately, to the General Assembly.

Despite the mild tone of this resolution, Australia, Belgium and France all indicated their opposition to it on the grounds of Article 2(7). However, in this case they did not, as they had done at previous sessions, seek to explain their opposition by reference to certain clauses of the resolution. On the contrary they indicated that their opposition was of a general and not specific nature, which constitutes a return to the more rigid view of intervention. Australia, for example, maintained that the United Nations was not even competent to discuss the matter. France simply maintained that the limitations of Article 2(7) had to be observed.<sup>1</sup>

The only other statements which are relevant to the present purpose are those of Peru, Argentina and the Philippines. These three nations appeared to be under the impression that the question of competence could be circumvented by not mentioning the Charter in the resolution and they hoped thereby to satisfy the objections of South Africa.

The Peruvian delegate said that:<sup>2</sup>

.....The Union has also refused to agree to any reference to the provisions of the Charter in resolutions on the topic under discussion.

The United Nations Committee of Good Offices had, after a certain stage, simply ceased to exist. Now that the old obstacles had been removed, the time would seem to be ripe to set a new course. Unfortunately, the representative of India had said that his delegation could not agree to the elimination of any reference to the Charter as a condition. In practice, however, it would be possible to adopt a resolution which would leave all doors open and omit any specific reference to the Charter. Since the Members of the United Nations drew their

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1. Australia: G.A.,(XI), Sp.Pol.Com., 7th mtg., para. 52; *ibid*, 10th mtg., paras. 42-43.

Belgium: *ibid*, 9th mtg., paras. 10-11.

France: *ibid*, 10th mtg., para. 41.

2. *ibid*, 8th mtg., paras. 19-20.

mandate for any joint action from the Charter there was no need to make an explicit reference to it in a resolution.

Argentina and the Philippines expressed similar views. Argentina,<sup>1</sup> one of the co-sponsors of the resolution, explained that her action was prompted by the desire to find a solution to the problem and to that end had omitted any reference to the question of competence and the juridical position of the United Nations. The Philippine delegate simply stated that he too wished for a resolution which did not refer to the question of domestic jurisdiction.<sup>2</sup>

It is not too clear what these three States hoped to achieve by the omission of any reference to the question of competence. It is evident that they were under the impression that the omission of any reference to this problem would circumvent it and that the resultant resolution would thus be acceptable. However, as the Peruvian delegate noted, competence flows from the Charter and it is not necessary to recite a particular provision in a resolution to prove that you are competent. Therefore, the omission of any reference to the Charter or to the question of competence in fact settled nothing.

However, despite its obvious failings, this attempt to produce an acceptable resolution has some importance for it demonstrates again the lengths to which States will go in their efforts to circumvent the strictures of Article 2(7). If their former statements of opinion of this topic are any guide, neither Peru nor Argentina would have voted for this resolution had they felt that it intervened in the domestic affairs of South Africa. They must therefore have been under the impression that it did not.

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1. *ibid*, 9th mtg., para. 20.

2. *ibid*, paras. 55-56.

(b) Twelfth Session.

The text of the resolution adopted by the twelfth session of the General Assembly was as follows:<sup>1</sup>

The General Assembly,  
Recalling its resolution 1015(XI) of 30 January 1957,  
Having considered the reports of the Governments of  
India (A/3645) and of Pakistan (A/3645),

1. Notes that the Governments of both India and Pakistan have reiterated their readiness to pursue negotiations with the Government of the Union of South Africa in accordance with the expressed desires of the United Nations;

2. Notes with regret that the Government of the Union of South Africa has not agreed to carry forward the purpose of General Assembly resolution 1015(XI) of 30 January 1957;

3. Appeals to the Government of the Union of South Africa to participate in negotiations with the Governments of India and Pakistan with a view to solving this problem in accordance with the Purposes and Principles of the United Nations Charter and the Universal Declaration of Human Rights;

4. Invites the parties concerned to report to the General Assembly as appropriate, jointly or separately, regarding the progress of the negotiations.

Like Resolution 1015(XI), the resolution adopted at the twelfth session of the General Assembly was little more than an appeal to the South African Government to negotiate. As such it was similar to, for example, resolution 265(III) which had been sponsored by the delegations of France and Mexico and

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1. G.A., (XII), Annexes, a.i.61, p. 4, Res. 1179(XII); adopted *ibid*, Plen., 725rd mtg., para. 113, by 64 votes to 0, with 15 abstentions, the details of which were as follows:

In favour: Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Austria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian S.S.R., Cambodia, Ceylon, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Japan, Jordan, Laos, Liberia, Lybia, Malaya, Mexico, Nepal, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Sweden, Syria, Thailand, Tunisia, Turkey, Ukrainian S.S.R., U.S.S.R., U.S.A.

Against: 0.

Abstaining: Argentina, Australia, Belgium, Canada, China, Dominican Republic, Finland, France, Italy, Luxembourg, Netherlands, New Zealand, Portugal, Spain, U.K.

found wide support in the General Assembly. Despite this similarity, however, States like Belgium which had supported resolution 265(III) abstained from supporting this one. Belgium stated that she doubted the competence of the United Nations in the matter and would abstain. Australia disputed the competence of the General Assembly even to discuss the subject.<sup>1</sup>

Against those opinions must be set, however, those of the United States, Peru, and Venezuela which supported this resolution as it did not in their opinion contravene the limitations of Article 2(7).

At the third session of the General Assembly the United States had supported the inclusion of an item dealing with the violation of human rights in Bulgaria and Hungary. In doing so the American delegate claimed that discussion of domestic affairs did not constitute intervention. At this session the United States again made similar statements, but this time added important qualifications. From the statements it is clear that the United States does not believe that no resolution can constitute intervention but that whether or not a resolution amounts to intervention depends on its terms. The United States therefore, like so many other nations, has come to regard the question of competence as a specific one, related to the terms of the particular resolution and not as something which can be decided on the basis of a priori theories. Explaining the American point of view, Mr. Wells said that:<sup>2</sup>

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1. Belgium: G.A., (XII), Sp. Pol. Com., 61st mtg., paras. 34-56.

Australia: *ibid*, para. 24.

The Dominican Republic also maintained that it was a domestic matter and indicated her intention to abstain, (*ibid*, 63rd mtg., para. 29); the United Kingdom doubted competence and abstained also, (*ibid*, paras. 34-35).

2. *ibid*, 61st mtg., paras. 6-7.

In the opinion of his delegation, the Assembly could, through discussion and sometimes through the adoption of an appropriate resolution, reawaken in the international community an awareness of the principles of the Charter of the United Nations and encourage the implementation of those principles. It could also request countries which were parties to a dispute to try to settle their differences through negotiation and the conclusion of mutually acceptable agreements.

It had been said, on the basis of Article 2, paragraph 7, of the Charter, which safeguarded the domestic jurisdiction of States, that the General Assembly was not competent to discuss a dispute such as that in question. The United States thought that, by discussing a problem, the Assembly did not go beyond the limits set by Article 2, paragraph 7. Nor did it violate the Article by making recommendations on the implementation by Member States of obligations imposed on them by the Charter in the field of human rights. That might not be the case where a resolution related to legislative or administrative action taken by a country at the domestic level. In a number of instances, in cases of that kind, the United States delegation had abstained or had made reservations.

Peru supported the proposed resolution because she felt it did not involve the question of competence. Explaining his country's position, the Peruvian delegate said that:<sup>1</sup>

.....his delegation agreed with what appeared to be the majority view, that the best method of settling the problem under discussion was by direct negotiations. In his statement at the previous meeting, therefore, he had outlined a plan whereby the matter would go before a neutral mediator who would not only supervise the negotiations but would be in a position to suggest legal remedies for any difficulties that might arise. The aim of that plan had been to eliminate misgivings which might have resulted from the question of the interpretation of Article 2, paragraph 7 of the Charter. Unfortunately, the idea had not found favour in the Committee, and no specific proposals to that effect had been made. However the Peruvian delegation did not feel that the four-Power draft resolution was incompatible with its original position, and would therefore vote in favour, although it had no great faith in the prospect of success. ....

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1. *ibid*, 63rd mtg., para. 58; see also *ibid*, 62nd mtg., paras. 11-15.

Venezuela felt that the resolution under consideration by the Committee did not in any way violate the principle of non-intervention and therefore supported it.<sup>1</sup>

(c) Thirteenth Session.

At its thirteenth session, the General Assembly adopted<sup>2</sup> the following resolution:<sup>3</sup>

The General Assembly,

Having considered the reports of the Governments of India (A/3850) and Pakistan (A/3854),

1. Notes that the Governments of both India and Pakistan have reiterated their readiness to enter into negotiations with the Government of the Union of South Africa in accordance with the expressed desires of the United Nations, and with the express declaration that such negotiations would not in any way prejudice their own position or the position taken by the Government of the Union of South Africa regarding their respective juridical stands in the dispute;

2. Regrets that the Government of the Union of South Africa has not replied to the communications sent by the Governments of India and Pakistan on this subject and has not yet agreed to confer with those Governments with a view to arriving at a solution of this problem in accordance with the purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights;

3. Appeals to the Government of the Union of South Africa to enter into negotiations to that end with the Governments of India and Pakistan without prejudice to the position taken by the Union of South Africa regarding its juridical stand on the issue;

1. *ibid*, 63rd mtg., para. 26.

2. G.A., (XIII), Plen., 783rd mtg., para. 59. The voting - 69:0:10 - was as follows:

In favour: Mexico, Morocco, Nepal, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Sweden, Thailand, Tunisia, Turkey, Ukrainian S.S.R., U.S.S.R., U.A.R., U.S.A., Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Austria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian S.S.R., Cambodia, Canada, Ceylon, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Fed. of Malaya, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Laos, Lebanon, Liberia, Lybia.

Against: 0

Abstaining: Netherlands, Portugal, Spain, U.K., Australia, Belgium, China, Finland, France, Luxembourg.

3. *ibid*, Annexes, a.i.62, p. 4; Res. 1302(XIII).

4. Invites Member States to use their good offices, as appropriate, to bring about negotiations in accordance with the desires expressed by the General Assembly at previous sessions,

5. Invites the parties concerned to report to the General Assembly as appropriate, jointly or separately, regarding any progress which may be made.

The debate on this topic at the thirteenth session was not protracted and as at the eleventh and twelfth sessions most delegates who spoke confined the main part of their remarks to expressing their regret that after so many years the problem was no nearer solution. The vast majority, of course, considered that the matter fell within the competence of the United Nations and therefore few statements on competence were made. However, as at previous sessions, a few States were at pains to explain why they were able to support the draft resolution and in so doing gave further evidence of the trend under discussion. The United States, New Zealand, and Canada all supported this resolution because they felt that it did not constitute intervention in the domestic affairs of South Africa. However they made it plain that had it done so, it would not have received their support.

Explaining New Zealand's position in the competence controversy, Mr. Larkin said that:<sup>1</sup>

His delegation took an intermediate position on the question of the General Assembly's competence to deal with the problems of human rights. While the General Assembly could not impose standards of conduct, it could proclaim them, directing attention to the principles to which the policies of all Member States should conform. Again, where a human rights problem had given rise to differences among States, the General Assembly might recommend methods for restoring and harmonizing relations, and, in certain circumstances, suggest in general terms, a basis on which a solution might be sought.

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1. ibid, Sp.Pol.Com., 124th mtg., paras. 9-11. The United States views were similar to those expressed at the previous session, cited supra, p. 113; see ibid, paras. 1-3.



The persons mentioned in the title of the item were South Africans and the General Assembly could neither assume nor share the South African Government's authority over them nor could it alter the fact that decisive action towards a solution would depend largely on the Union of South Africa. Accordingly there would be no value in adopting resolutions which were patently unpalatable to the Union. Fortunately, the draft resolution was moderate in tone, its basic provision being an appeal for negotiations. His delegation would therefore support it, on the assumption that operative paragraph 4, inviting Member States to use their good offices, contained no suggestion of compulsion.

In the same vein, the representative of Canada said that:<sup>1</sup>

.....The majority of persons of Indian origin in South Africa were, of course, nationals of the Union of South Africa, and the General Assembly could therefore not make any recommendations of a coercive nature but could only appeal for negotiations and encourage the parties to co-operate.

While the vast majority accepted this resolution because they considered the matter to be primarily international, these three were at some pains to differentiate between the kinds of resolutions which they found acceptable and those which they did not. They did this because they did not consider that the United Nations had full competence in the matter.

The exact legal value of the position taken by the United States, New Zealand and Canada, and other States like them, on the question of competence is not clear. It is perhaps debateable whether a matter can be, in this way, partly within and partly outwith the competence of the United Nations. However, for our purposes it is not important to answer this question. What is important is that these three attempted to draw a distinction between various kinds of recommendations without answering the question as to whether a particular matter was or was not within the domestic jurisdiction of a particular State. In so doing they contributed to this trend in the evolution of the concept of intervention in United Nations practice.<sup>2</sup>

1. *ibid*, paras. 24-29.

2. At the thirteenth session, neither Australia, Belgium, France nor the United Kingdom spoke.

## 11. Post Repertory Period.

From the fourteenth session onwards, the debates on this subject practically cease to be of any interest for the present purposes. The reason for this is not hard to find - by this time practically nobody considered this subject to be essentially domestic any longer. Even the United Kingdom, for example, had come round to the view that it was no longer an essentially domestic matter.<sup>1</sup> However, one statement of interest was made at the sixteenth session. This was the statement of the French delegation. It will be remembered that at the ninth and tenth sessions France had abstained from voting on resolutions which had very much resembled ones she herself had supported at the earlier stages of this case and that this seemed to betoken a stricter approach to what France considered as intervention. At the sixteenth session, however, France appears to have returned somewhat to the compromise position. Her delegate said that he was anxious to avoid any interference by the United Nations in the domestic affairs of a Member State. However, France, he said, was also strongly attached to the principles inscribed in the Universal Declaration of Human Rights and to the ideals of freedom and equality on which French institutions were based. He would therefore vote in favour of the proposed draft resolution.<sup>2</sup>

Throughout the debates at these sessions interest in the question of competence was minimal, it having become universally accepted that the matter was no longer domestic and eventually at the seventeenth session this item was at last joined to the consideration of South Africa's racial policy and so disappeared as a separate item of the agenda.

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1. G.A.,(XV), Plen., Part II, 981st mtg., para. 11.

2. G.A.,(XVI), Sp.Pol.Com., 298th mtg., para. 12.

12. General Conclusions.

Little need be added to the case history set out above. The general trend in the practice of the various States which were concerned to avoid intervention in South Africa's affairs is fairly evident. The majority of them were prepared to accept a resolution which called on South Africa to negotiate with India and Pakistan on the subject and did not decline to consider the matter just because there was some doubt as to the status of the matter.

It should be emphasised, however, that this is only a general trend. Throughout the practice in this case, there are discrepancies which make any dogmatic conclusions out of place. But that there was evident in this case such a general trend is not, it is submitted, to be doubted.

## Chapter IV

### The Question of the Race Conflict in South Africa.

The question of the race conflict in South Africa, resulting from the policies of apartheid of the South African Government, was brought to the attention of the United Nations jointly by the representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi-Arabia, Syria and Yemen.

#### 1. The Seventh Session.

As already noted, South Africa attempted, unsuccessfully, to have this item deleted from the definitive agenda, and in this attempt she was supported by the delegations of Colombia, France, New Zealand and the United Kingdom.<sup>1</sup>

The States which had requested the inclusion of this item in the agenda were joined by Bolivia, Guatemala, Haiti, Honduras and Liberia in sponsoring the following resolution:<sup>2</sup>

#### The General Assembly,

Having taken note of the communication dated 12 September, 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Syria, Saudi-Arabia, and Yemen, regarding the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,

Considering that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling that the General Assembly declared in its resolution 105(I) that it is in the highest interests of humanity to put an end to religious and so-called racial persecution and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

Considering that the General Assembly has held in its resolutions 395(V) and 511(VI) that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

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1. See Vol. I, Chap. VII, p. 186.

2. G.A., (VII), Annexes, Vol. II, a.i.66, p.3, Doc.A/AC.61/L.8/Rev.1

Conscious that international co-operation cannot be furthered and that international peace may be disturbed by the policies of racial discrimination and persecution, especially where such policies affect majority populations in an area,

1. Establishes a commission consisting of ... to study and examine the international aspects and implications of the racial situation in the Union of South Africa in the light of the purposes and principles of the Charter and the resolutions of the United Nations on racial persecution and discrimination and to report its findings to the eighth regular session of the General Assembly;

2. Invites the Government of the Union of South Africa to extend its fullest co-operation to the Commission;

3. Requests the Secretary-General to provide the Commission with the necessary staff and facilities;

4. Decides to retain the question on the agenda of the eighth regular session of the General Assembly of the United Nations.

(a) The Attitude of States.

The attitude of States towards this and the other resolution which was eventually introduced<sup>1</sup> vary. Some, albeit a minority, adopted a rigid attitude towards the definition of intervention. Others, as in previous cases, were more flexible in their approach to the problem.

(i) The Rigid Approach

In this case, the United Kingdom was unwilling to compromise in her approach to the definition of intervention. In her opinion, the item fell essentially within the domestic jurisdiction of South Africa and as a consequence the United Nations was competent neither to discuss it nor to adopt recommendations thereon.<sup>2</sup> A similar position was taken by France,<sup>3</sup> Australia,<sup>4</sup> and Belgium.<sup>5</sup> At this session New Zealand, like the United Kingdom and France voted for the exclusion of the item from the agenda of the General Assembly.

1. See *infra*. p. 142.

2. G.A., (VII), Ad Hoc Pol. Com., 14th mtg., paras. 1-15.

3. *ibid*, 15th mtg., paras. 6-7; *ibid*, 21st mtg., para. 3.

4. *ibid*, 16th mtg., paras. 34-49.

5. *ibid*, paras. 70-71; *ibid*, 21st mtg., para. 24.

However, once the substantive debate was underway, she seemed to have developed some doubts on competence and suggested that this question should be remitted to the International Court of Justice. Because of her doubts on competence, she did not vote in favour of the South African motion denying it, despite the fact that she had voted to exclude the item from the agenda. However, she voted against the operative part of the eighteen-power draft resolution and abstained on the Scandinavian one.<sup>1</sup> Turkey indicated that because of her doubts on competence she would abstain in all votes.<sup>2</sup>

Though the numbers of those who opposed any form of United Nations action was thus small, their opposition was of the strongest variety. The delegations of Belgium, France, the United Kingdom and South Africa all indicated, for example, that they could not even accept a general recommendation on the subject of racial discrimination, addressed to all States, because it would have originated out of a debate on the domestic affairs of South Africa.<sup>3</sup>

The South African motion denying the competence of the United Nations was defeated by substantial majorities, both in committee and in the plenary session.<sup>4</sup>

1. *ibid.*, 14th mtg., paras. 20-34; and *ibid.*, 20th mtg., paras. 53-54.

2. *ibid.*, 21st mtg., paras. 46-47.

3. See *supra*, Chap. I, p. 4.

4. In the Ad Hoc Political Committee, it was defeated by 45 votes to 6, with 8 abstentions (21st mtg., para. 34); in the plenary session it was rejected by 43 votes to 6, with 9 abstentions (401st mtg., para. 89). The votes in both bodies were the same, except for Canada and Guatemala. Canada voted against it in committee, and abstained in the plenary session. Guatemala, which voted against it in committee, appears to have been absent when the vote was taken in plenary session. The other details of voting were as follows:  
In favour: France, Luxembourg, Union of South Africa, United Kingdom, Australia, Belgium.  
Against: China, Colombia, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., U.S.A., Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile.  
Abstaining: Dominican Republic, Greece, Netherlands, New Zealand, Peru, Turkey, Venezuela, Argentina, Canada.

(ii) The Flexible Approach.

Although the South African motion denying the competence of the United Nations was defeated by such substantial majorities, a considerable number of States which voted in favour of the substantive resolutions at the end of the debate expressed grave concern lest the United Nations, by adopting some of the provisions thereof, should be guilty of intervening in South Africa's domestic affairs. Indeed these fears of being guilty of intervention were responsible for important amendments to the terms of the original draft resolution submitted by the eighteen powers concerned.

The attitudes towards the question of competence varied considerably. Some States considered that the United Nations was at least competent to discuss this matter, but did not wish to see any further action taken. Others felt that some kind of recommendation was intra vires of the General Assembly but that great care would have to be exercised not to overstep the limit between legality and prohibited actions.

Throughout these statements there ran the constant theme of domestic jurisdiction and the difficulty of defining where domestic jurisdiction ends and international responsibility begins. The problem is, of course, difficult, if not insoluble, and some States attempted to circumvent it by postulating that a matter can be within international jurisdiction to a certain extent and yet remain, for many purposes, essentially within the domestic jurisdiction of particular States. The idea appears to have been that even though a matter were within the domestic jurisdiction of a particular State nevertheless, if it had international implications the United Nations had a limited competence to deal with it.

This, of course, is just another way of getting at the problem of defining intervention, for what such States are trying to say is that while the United Nations may be competent to take some form of action with respect to a domestic

matter, it cannot take another.

The Statements in which this idea has been put forward are often confused. Not infrequently, for example, a State will take note of the fact that the competence to deal with a certain type of subject appears, according to the terms of the Charter, to be shared between the United Nations and the Members individually. The limitations on the powers of the United Nations consequent on such a view are noted. But then, so often, the State putting forward this claim will negate it all by maintaining that the subject matter under discussion is not essentially within the domestic jurisdiction of a particular State. The question which immediately arises of course is why the powers of the United Nations are limited if the subject is not essentially within the domestic jurisdiction of a particular State?

However, despite the inconsistencies which are to be found in such statements they do provide continuing evidence of the trend to regard the question of competence as something specific, which is related to the terms of a particular resolution and not a general question, the resolution of which denies to the United Nations all competence.

(1) Sweden

Sweden has attempted to avoid the extremes of both the technical and non-technical schools of interpretation. She does not agree with the view that all United Nations action is prohibited by Article 2(7) just because a matter is domestic nor with the idea that no recommendation can be construed as intervention. In the course of the debates on this item at various sessions she came to the conclusion that the United Nations is competent to discuss a matter of this nature and to make recommendations thereon of a general character addressed to a particular State, but no more. In Sweden's opinion, the United Nations is not competent to recommend that a State follow a particular course of action with respect to its domestic affairs.

At the seventh session, the Swedish delegate told the Ad Hoc Political



Committee that:<sup>1</sup>

It was generally agreed that the term 'domestic matter' was a concept which was liable to change through the evolution of the law of nations and of international relations in general. A domestic matter today might well become an international matter tomorrow. For example, Chapter XI of the Charter required Member States administering Non-Self-Governing Territories to transmit certain information on such territories to the Secretary-General. Relations which were in principle a domestic matter had thus acquired an international character. The point was therefore whether Member States had assumed any obligations in regard to human rights. If they had, their policies on such matters were no longer exclusively their own concern.

The Charter at least imposed on Member States the obligation that they should not bar any discussion in the United Nations of their policies in that field or the adoption of recommendations in connection with such discussions. The General Assembly itself had confirmed that view by repeatedly stating that it was entitled to discuss racial policies of Member States and to adopt recommendations on them. The Assembly had also called for the investigation of alleged forced labour imposed in violation of human rights, disregarding the objection that the matter was within the domestic jurisdiction of a State.

The Swedish delegate was not prepared to formulate a rule distinguishing between permissible recommendations and those that infringed upon domestic jurisdiction. It could not, however, subscribe to the opinion expressed on the matter by the representative of South Africa.

Later on in the debate the Swedish delegate added that in her opinion the United Nations was competent to make recommendations stating the purposes to be achieved and calling on States to adapt their policies to those purposes. But it was not competent, she claimed, to draft specific measures to be imposed on a State. Thus, Sweden felt that the eighteen-power draft resolution exceeded the limits of the General Assembly's competence.<sup>2</sup>

The statements of the Swedish delegate here dealt with represent a reasoned attempt to resolve the problems inherent in Article 2(7). Unfortunately, she

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1. G.A., (VII), Ad Hoc Pol. Com., 13th mtg., paras. 31-35.

2. *ibid*, 21st mtg., paras. 9-10.

added for good measure that the question of race conflict in South Africa was not essentially within the domestic jurisdiction of that country and it may well be asked if that were so why she went to the trouble to elaborate the above distinctions.

(2) Brazil

As in other cases, Brazil was keen to avoid any hint of intervention in the domestic affairs of a State. Her statements on this occasion again gave evidence of her adherence to a more flexible definition of intervention. The Brazilian delegate, Mr. Fragoso, said that competence was not a problem which could be decided on the spur of the moment. By including this item on the agenda, he said, the General Assembly had decided that it was competent to discuss it. But whether or not it was competent to adopt recommendations was another matter which could only be decided in the light of specific proposals.<sup>1</sup>

Brazil gauged intervention not so much by the form of the action which the United Nations took, i.e., by the fact of a discussion having taken place or a recommendation having been made, but by what those recommendations sought to do.

Later on in the debate Mr. Fragoso added that while he approved of the intentions of the proposers of the draft eighteen-power resolution, he had certain doubts on the competence of the United Nations to give the Commission such terms of reference. He said that the limitations imposed by the Charter had to be respected and that the Committee must not encroach on the domestic jurisdiction of States. He felt that the terms of reference and powers of the proposed Commission were likely to cause misgivings.<sup>2</sup> To <sup>1</sup>alleviate these, he proposed that the Commission be instructed to carry out its functions with due

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1. *ibid.*, 14th mtg., paras. 16-19.

2. *ibid.*, 18th mtg., paras 60-63.

regard for Article 2(7) and that it report its 'conclusions' rather than its 'findings' to the Assembly.<sup>1</sup> With the acceptance of these amendments, the eighteen-power draft resolution became acceptable to Brazil as, in its amended form, it seemed to safeguard against any possible invasion of the domestic jurisdiction of South Africa.

(5) Norway

The Norwegian delegation concurred with the views expressed by Sweden.<sup>2</sup> In her opinion, Article 2(7) in no way prevented the United Nations from at least discussing the matter. Justifying this interpretation of the word 'intervene', the Norwegian delegate added that in many cases, as in the present one, there was no clear dividing line between the discussion of competence and the discussion of substance, since the question of competence could not be decided until more was known about the substance of the matter.<sup>3</sup>

While, however, Norway was prepared to allow the United Nations to discuss the matter, she was not too happy about allowing it to have unlimited power of recommendation. Like Sweden she had certain reservations on this subject. In particular, she objected to paragraphs 4 and 5 of the preamble and to paragraphs 1, 2 and 3 of the operative part of the eighteen-power draft resolution.

However, while Norway doubted the competence of the United Nations to adopt the eighteen-power draft resolution, she did not dispute its power to adopt some type of resolution. Together with the delegations of Denmark, Iceland, and Sweden she proposed the following amendments to the eighteen-power draft:<sup>4</sup>

1. Doc. A/AC.61/L.10; See G.A.(VII), Annexes, Vol.II, p.7, Doc.A/2276, para. 11.

2. G.A.,(VII), Ad Hoc Pol.Com., 13th mtg., paras. 36-45.

3. G.A.,(VII), Ad Hoc Pol.Com., 13th mtg., paras 36-45.

4. *ibid*, Annexes, Vol.II, a.i.66, Doc A/AC.61/L.9, p.4.

Replace the fourth and fifth paragraphs of the preamble, as well as paragraphs 1, 2 and 3 of the operative part by the following paragraphs:

Recognizing that the methods for discharging the responsibilities of Members under the Charter and for giving effect to their Charter pledges may vary with circumstances such as the social structure of the States concerned and the different stages of development of the various groups involved,

1. Declares that in a multiracial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality;

2. Affirms that governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter;

3. Solemnly calls upon all Member States to bring their policies into conformity with their obligations under the Charter to promote the observance of human rights and fundamental freedoms.

It will be observed that whereas the clauses to which Norway objected in the eighteen-power draft resolution specifically referred to the Union of South Africa, the clauses with which she proposed to replace them did not. They only contained a general appeal to all Members to re-examine their policies in the light of the Charter provisions.

(4) Denmark

The attitude adopted by Denmark was similar to that of the other Scandinavian countries just discussed. Denmark considered that the United Nations was competent to discuss this question, but was not sure how much further it could go. Her opinions on this subject were somewhat equivocal, as indeed were those of Sweden and Norway and are only comprehensible if it is accepted that Denmark too adhered to a more flexible definition of intervention which leaves the United Nations certain powers with respect to the domestic affairs of particular States.

Denmark indicated, on the one hand, that matters of human rights were

within the competence of the United Nations but, on the other, that it was difficult to determine the limits of that competence. Her delegate said that because of the obligations undertaken by Members in Articles 55 and 56, the United Nations was competent to discuss questions of human rights, but that it was doubtful what further action it could take, and on this point favoured an advisory opinion from the International Court of Justice.<sup>1</sup>

(5) Mexico

Although Mexico had, in the question relating to the relations of Members of the United Nations with France Spain, espoused very broad views on the powers of the United Nations with respect to the domestic affairs of Members, in this case she seemed to be more wary and like many other States was keen to avoid any hint of intervention in South Africa's domestic affairs, though, at the same time, wishing to do something about the apartheid question.

In the course of the debate, the Mexican delegate indicated succinctly the difficulty facing the Assembly in dealing with this question. Stressing the apparent contradiction between Article 2(7) and the human rights provisions of the Charter, Mr. Quintanilla said that:<sup>2</sup>

The United Nations, therefore, could neither ignore the principle of non-intervention in matters falling within the domestic competence of States nor could it condone the violation of human rights. For his part, he thought that the Committee was legally justified in taking note of the regrettable situation which existed, and in establishing, as proposed by the joint draft resolution, a commission to study it. Such a commission would be something quite different from a commission of inquiry . . . . It (the Mexican delegation) would, however, have preferred that the contemplated study should relate not only to the Union of South Africa but also to any similar situation, wherever it existed. Moral principles knew no geographical boundaries, and racial segregation or discrimination were to be condemned in all countries. He hoped the contemplated study would relate to all areas where it was needed.

1. G.A., (VII), Ad Hoc Pol.Com., 18th mtg., paras. 46-50.

2. *ibid*, 16th mtg., paras. 16-20, partic. para. 19.

It is not clear from the Mexican statement whether her wish to have the proposed study refer to all areas where discrimination was to be found was due to political motives or to some doubts as to the competence of the General Assembly to deal with the affairs of one country in particular. However, the wish of Mexico to avoid the charge of intervention in South Africa's domestic affairs, while at the same time doing something about the apartheid problem, is clear.

Later in the same debate, the Mexican delegate introduced an amendment supplementary to the Brazilian one, by which the Commission would be directed to study and examine the racial situation in South Africa with due regard, not only to the provisions of Article 2(7) but also of Articles 1(3), 15b, 55c, and 56 of the Charter.<sup>1</sup> In the opinion of the Mexican delegation, if this amendment were accepted, the proposed commission would then have balanced terms of reference, which would take account of the contradiction which he had spoken of above. Mr. Quintanilla said that.<sup>2</sup>

.... it would have an adequate legal basis on which to operate; it would be taking account of the Charter guarantee against intervention in domestic affairs, on the one hand, and of the Charter guarantees regarding human rights, on the other.

In previous sessions Mexico may have tended to the view that no recommendation could constitute intervention in the domestic affairs of a Member State, but such was not the case here. In this case she clearly felt that it was possible for the General Assembly to overstep its powers, unless it was very careful. Equally, however, she clearly supported the view that some kind of recommendation was possible, provided it was worded in the correct fashion.

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1. *ibid*, 20th mtg., para. 65.

2. *ibid*.

(6) The Netherlands

The Netherlands, like Norway, Sweden and Denmark, adopted a somewhat equivocal position on the competence of the United Nations to entertain this item. Indeed about the only thing which emerges with any certainty from the statement of the Dutch delegate, is the confusion pervading Dutch thought on this matter.

The part of the speech of the Dutch delegate reproduced here is somewhat long. However, it is instructive regarding the contradictions and difficulties which are to be found in the Charter in these matters. Mr. Patijn said that:<sup>1</sup>

.....the Netherlands delegation did not think that the General Assembly could refuse to discuss a question which by its very nature was bound up with respect for one of the essential principles of the United Nations. After adopting the statement of principle laid down in Articles 55 and 56 of the Charter, the Members could not evade the obligation to discuss questions raised under those Articles by a group of Members. The extent to which those Articles gave rise to legal international obligations had not been clearly established, but it could at least be said that they imposed on Member States the obligation not to evade international discussion.....

As regards the general question of whether the General Assembly was entitled to take action on the item before the Committee, the Netherlands representative observed that much had already been said in the debate on the meaning of domestic jurisdiction and about Article 2, paragraph 7, of the Charter. There could be no doubt that the principle of non-intervention in the domestic affairs of States was one of the fundamental principles of the United Nations. The General Assembly could not discuss or make recommendations on matters which were within the domestic jurisdiction of any State. Thus, before any action was taken, it had to be determined whether the question of race conflict in the Union of South Africa was exclusively within the competence of the South African Government. If it were, the Assembly was not competent to take action on it. If, on the other hand, the question had certain international implications, the Assembly could, to a certain extent, declare itself competent to deal with it.

A question ceased to be exclusively one of domestic jurisdiction when its substance was subject to international

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1. *ibid.*, 16th mtg., paras. 27-33; emphasis added.

law. It had therefore to be determined whether the South African Government was bound by international obligations in the matter, or, in other words, whether the Articles of the Charter concerning respect for human rights and fundamental freedoms for all without distinction as to race, created international obligations for Member States. It could be maintained that questions relating to human rights did not involve any specific legal obligations and that the provisions of the Charter concerning respect for those rights were merely a statement of principle. On the other hand, there was no doubt that the pledge taken by Member States to act both jointly and individually in co-operation with the United Nations had not been undertaken lightly and could not be disregarded. By signing the Charter, Member States had assumed certain obligations which though not formal commitments under positive law, were more than just an acknowledgment of a principle. Any action by a Member State at variance with those international obligations was therefore an international matter and not merely a matter of domestic jurisdiction. Assuming that the obligations undertaken under Article 55 and 56 of the Charter were, to some extent, international obligations, the question of racial discrimination should be considered in the light of two mutually exclusive provisions of the Charter. On the one hand, according to Article 2, paragraph 7, the racial issue was a matter which was essentially within the domestic jurisdiction of the Union of South Africa; on the other hand, it was subject to the provisions of the Articles of the Charter concerning human rights.

What could the General Assembly do in the circumstances? Since the question was to a certain extent an international issue, the Netherlands delegation felt that the General Assembly was competent to discuss it. It was less certain that the Assembly was competent to make recommendations in the matter. The Netherlands delegation felt that only an advisory opinion of the International Court of Justice could decide the matter, but as none of the parties to the dispute seemed prepared to ask for such an opinion, it would not make a formal proposal to that effect. Moreover, until the question of competence was decided, the Netherlands delegation would probably abstain from voting in any recommendations on the substance of the question. It would, however, reserve its position because of the amendments submitted by the Scandinavian countries to the joint draft resolution.

This statement is a veritable patchwork of confusion. First, Mr. Patijn concerns himself with the powers of the General Assembly where a matter is exclusively within the domestic jurisdiction of a Member State, but of course, this word nowhere appears in the Charter. It is true that there is a certain



amount of controversy concerning the exact legal effect of the substitution of the word 'essentially' in Article 2(7) of the United Nations Charter, for the word 'solely' used in Article 15(8) of the Covenant of the League of Nations. However, this controversy forms no part of Mr. Patijn's argument and it would not, therefore, be reasonable to impute to him an intention to take account of it in his speech. Secondly, he maintained, simply, that the General Assembly could not discuss or make recommendations on matters 'within the domestic jurisdiction of any State'. However, immediately prior to that he claimed that the General Assembly had the right to discuss this item. Therefore, from this it must be concluded that the matter did not fall within the domestic jurisdiction of South Africa. But if that were the case, why would the competence of the Assembly be limited, as he indicates, throughout the quotation, it is? Thirdly, the final assertion is that this item is essentially within the domestic jurisdiction of South Africa. However, this assertion was made at the end of a paragraph devoted to proving that the matter was not exclusively within that jurisdiction and that as a consequence the General Assembly had a certain competence to deal with it. No indication is given of the reason for the change in terminology, from exclusively to essentially, or indeed whether this is material to the case.

It cannot be said that the Dutch analysis of Article 2, paragraph 7 in this case was too meaningful. However, one thing of importance does emerge from these statements. The purpose of these devious paths of logic was to point to a certain limited competence of the United Nations to deal with questions of human rights even in relation to a particular State. The Netherlands seemed here to be striving to arrive at some formula whereby the General Assembly would be able to do something about this question and yet not infringe the prohibition of intervention in the domestic affairs of a Member State. This is, of course, just

another way of saying that the Netherlands was attempting to arrive at a compromise definition of intervention, one which did not deny to the General Assembly all power with reference to the domestic affairs of Member States, and at the same time did not allow it to exercise its full complement of powers with respect thereto.

(7) Ecuador.

Ecuador did not consider that the setting up of a commission to study the racial situation in the Union of South Africa constituted intervention in that country's affairs. However, equally, Ecuador did not appear to be insensitive to the suggestion that under the circumstances, some types of recommendations might constitute intervention.

The Ecuadorean delegate, Mr. Trujillo, reminded the Committee that, in the Indians in South Africa case, his delegation had voted for the establishment of the Good Offices Commission as it had considered this the most effective means of bringing the parties together. However, he also reminded the Committee that Ecuador had opposed the parts of those resolutions which urged the suspension of the Group Areas Act because such a recommendation would, in her opinion, have constituted intervention in the domestic affairs of South Africa. Mr. Trujillo informed the Committee that his delegation would vote for the establishment of the commission in this case, because its establishment was not incompatible with Article 2, paragraph 7 of the Charter. The Ecuadorian delegate reviewed the main provisions of the Charter by which the Member States had voluntarily pledged themselves to promote respect and observance of human rights and had agreed to co-operate within the United Nations to realize one of the 'common ends' most vital to the achievement of good international relations and to the preservation of world peace. He said that:<sup>1</sup>

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1. *ibid*, 17th mtg., para. 5.

... That Pledge and that agreement were not incompatible with the protection afforded to every State as a legal entity under Article 2, paragraph 7. The principle of non-intervention in the internal affairs of States was the corner stone of the security of Latin-America. As it had never been defined by law, it must be understood in its natural meaning. Intervention, according to an authoritative dictionary of the Spanish language, was the temporary direction by one State in the internal affairs of another. By that standard, and in the light of the growing interdependence of nations in the modern world, the setting up of a commission to study economic, social and cultural conditions inside Member States could not be construed as intervention in their domestic affairs. ....Accordingly, the joint draft resolution (A/AC.61/1.8/Rev.1) which would merely establish a commission to study and report on the racial situation in South Africa, in no way intervened in that country's internal affairs. In the light of the Commission's findings the United Nations would determine how best to promote the observance of human rights in South Africa.

At a later stage, Ecuador expressed the view that no recommendation could constitute intervention in the domestic affairs of a State.<sup>1</sup> However, her concern both here and in the Indians in South Africa case to avoid any recommendation which would contravene the terms of Article 2(7) would seem to indicate a different approach.<sup>2</sup>

(8) United States

In this session the United States clearly espoused the view that the competence of the United Nations to adopt a recommendation on any subject could only be determined with reference to the terms of the recommendation proposed, i.e., the United States here held to the view that competence was a specific question, related to the action sought, not a general question which could be determined a priori.

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1. Supra, Chap. I, p. 5.

2. At the 17th mtg. of the Ad Hoc Pol. Com., para 6, the Ecuadorean delegate proposed (Doc.A/AC.61/L11) the deletion of the 5th paragraph of the preamble, the deletion of the words 'and examine the international aspects and implications of' in paragraph 1 of the operative part, and the deletion of paragraph 4 of the operative part. It does not appear, however, that these amendments were motivated by legal considerations.

The United States delegate, Mr. Sprague, said that:<sup>1</sup>

With regard to the legal issue of competence he felt that the South African motion was too broad in that it would preclude discussion of the agenda item under consideration. The exercise of the right of discussion did not contravene Article 2, paragraph 7 of the Charter; the legal restriction contained in that Article should not prevent adequate consideration of the vital question of human rights in a dynamic world. On the other hand, it would be unwise to leave the door open to every kind of proposal. In the light of its own experience with a written constitution, the United States felt that the General Assembly should steer a middle course and continue, as it had done in the past, to feel its way in dealing with the legal aspects of such difficult problems as the racial situation in South Africa.

However, while the United States voiced these reservations on the question of competence, she did not indicate her views on the legal aspects of the eighteen-power draft or the Scandinavian amendments thereto. She did prefer the resolution as amended by the Scandinavian countries but it appears that her objections to the original terms were mainly political.

(9) Costa Rica.

In keeping with normal Latin-American practice, Costa Rica indicated her desire to avoid any intervention in the domestic affairs of South Africa. However, she also differentiated between resolutions which, in her opinion, did amount to intervention and those which did not.

Explaining the Costa Rican position, Mr. Fournier said that:<sup>2</sup>

.....The discussion of the problem in the United Nations was no more intervention in the domestic affairs of Member States than the dissemination of the concept of the rights of man had been in the eighteenth century. Discussion would lead to an exchange of ideas, the usual result of which was that right and justice would triumph.

There was no intention of intervention or of violation of sovereignty in proposing that a commission should be set up to study and examine the international aspects and implications of the racial situation in the Union of South Africa.

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1. *ibid.*, 17th mtg., para. 10.

2. *ibid.*, paras. 36-37; emphasis added.

That country presented a concrete case of a problem regarding the rights of large masses of human beings. Policies of racial discrimination belonged to the same category as the policies of State-domination which led to totalitarian regimes. Society must be based on a general principle of justice for all. In accordance with those principles, the Costa Rican delegation would vote in favour of the eighteen power joint draft resolution with the amendments proposed by the Scandinavian delegations. To go further might take the Committee to the edge of intervention. Mr. Fournier stressed the need to retain full respect for national sovereignty, as defined in the Convention on rights and duties of States signed in Montevideo in 1933, and also in Article 2 of the Charter.

Later in the same debate, after the Scandinavian amendments to the joint draft eighteen-power resolution had been introduced as a separate resolution,<sup>1</sup> Mr. Fournier reminded the Committee that at the 17th meeting his delegation, though regretting that the powers of the proposed fact-finding commission had not been severely limited so as to avoid any risk of intervening in the domestic affairs of the Union of South Africa, had nevertheless supported the eighteen power draft resolution. He had made it clear, he said, that his delegation would vote for the draft if it were amended on the lines proposed by the Scandinavian countries. He pointed out that the Scandinavian amendment broadened the terms of the draft resolution and so made it applicable to any similar situation. He went on to add that as the Brazilian and Ecuadorean amendments had been accepted by the sponsors of the eighteen power draft, there was no longer any danger that the fact-finding commission might intervene in the domestic affairs of South Africa. Therefore, Costa Rica would vote for the draft resolution. Mr. Fournier remarked that he found it surprising that some delegations which recognized the Assembly's competence to consider the question, did not deem it competent to set up a fact-finding commission which was to seek a solution to a hitherto insoluble problem.

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1. See *infra*, p. 142.

Costa Rica would also, Mr. Fournier said, vote for the now independent Scandinavian draft resolution.<sup>1</sup>

It is quite clear that Costa Rican support for the recommendations adopted at this session was entirely dependent upon safeguards against their being construed as intervention in the domestic affairs of South Africa.

(10) China.

China also adhered to a middle-of-the road policy on this question of intervention. Her delegate pointed out that the question of competence was relative and that the United Nations might be competent to deal with certain aspects of a matter but not with others. The General Assembly, he said, might be competent to take certain decisions but not to take others.

He went on to indicate that, in China's opinion, questions dealing with human rights were within the scope of the Charter. Nevertheless, his statement does indicate that China is alive to the problems which surround the question of intervention and that she too will judge the question of intervention on the results sought to be achieved, not by the external form of the action.<sup>2</sup>

(11) Canada.

In this case Canada adhered to the liberal view of the powers of the United Nations which she had adopted in other sessions. She was prepared to approve some measures, while at the same time opposing others because of her doubts on the competence of the General Assembly to take them. Her representative, Mr. Martin, said that:<sup>3</sup>

....His delegation had listened with interest to the interpretation which certain representatives had placed on Article 2, paragraph 7, of the Charter, but could not agree that those

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1. *ibid.*, 21st mtg., paras. 14-16.

2. *ibid.*, 18th mtg., para. 32.

3. *ibid.*, 20th mtg., paras. 12-15.

members who expressed concern about the international implications and long-term consequences of what they regard as policies of racial discrimination were trying to override the Charter. He referred to a statement made by Mr. St. Laurent, then Canadian Secretary of State for External Affairs, in the first Committee in 1946 that if too great an effect were given to Article 2, paragraph 7, of the Charter it might seriously impair the extremely important rights of the General Assembly to discuss and make recommendations for the peaceful adjustment of any situation which it deemed likely to impair friendly relations among nations. ....

....The Canadian delegation had no intention of ignoring Article 2, paragraph 7, of the Charter, or dismissing it as a legal technicality. It felt, however, that a distinction should be drawn between intervention and the right of the General Assembly to discuss any matters within the scope of the Charter. ....

The Canadian delegation had always felt that an authoritative legal opinion was desirable whenever the interpretation of an important Article of the Charter was in dispute. ....

With regard to the various draft resolutions before the Committee, he felt that in the absence of an authoritative legal opinion and because of the divergence of views on the question of competence, the Committee should proceed with the utmost caution, especially since it was the first time that that particular question had been brought before it. .... The Canadian delegation would have voted in favour of the eighteen-power draft resolution if the Scandinavian amendment as originally proposed had been carried. The language of that amendment had appeared to his delegation not as a means of dodging the issue, as some delegations had thought, but rather as calculated to avoid a reaction which might be harmful to the very people whom the Committee was anxious to help. The racial problem was a matter of concern to the whole world and not only to the Union of South Africa..... Since the Scandinavian amendment had been re-issued as a separate draft resolution his delegation felt that it had lost some of its attractiveness, but still hoped that it would receive a large majority vote. The Canadian delegation would be obliged to abstain from voting on the joint draft resolution as a whole, because of doubts on the United Nations competence to take the action set out in paragraph 1 of the operative part.

By her statements, Canada seemed here to be groping towards some kind of compromise definition of intervention. Her statement is of importance for it adds to the growing number of States which look upon the question of competence as something to be decided, not a priori, on the basis of some preconceived definition, but

rather on an ad hoc basis, in the light of the action sought by the proposed recommendation.

(12) Peru.

Peru voted against the South African draft denying the competence of the United Nations to deal with the item. Nevertheless, she declined to vote in favour of the eighteen-power draft resolution as this, in her opinion, constituted interference in South Africa's domestic affairs. She was, however, prepared to vote in favour of the Scandinavian draft, although even here she declared her intention of abstaining on paragraph 1 of the preamble and paragraph 2 of the operative part thereof.<sup>1</sup> Explaining Peru's position Mr. Maurtua said that:<sup>2</sup>

.... Peru, like all other Latin-American States, was deeply attached to the principles of freedom and equality and considered the respect of human rights to be a fundamental tenet of the Charter. Nevertheless, neither the Charter's injunctions to safeguard those rights, nor the proclamation of them in the Universal Declaration of Human Rights could be binding on Member States. Until an effective legal instrument obliging nations to implement human rights had been adopted and ratified, the General Assembly in exercise of what might be called its moral jurisdiction, could do no more than appeal to the goodwill of States to promote observance of those rights. Obviously, whenever human rights were safeguarded in treaties, the signatories were bound contractually to ensure respect for them. However, as the record of the San Francisco negotiations would show, the General Assembly had the right to promote respect for human rights, but the establishment of the means whereby that respect was to be ensured had been left for a later stage in the development of the United Nations. The future covenants on human rights would constitute such means and would set up the necessary enforcement organs.

.... Intervention had been interpreted to mean not only the use of force but the tendency to interfere with the judicial, political, social, and economic factors which went to make up such legal entity. Accordingly, Peru could not vote in favour of any resolution which might compromise the sovereignty of a

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1. See *infra*, pp.142-143.

2. G.A., (VII), Ad Hoc Pol. Com., 20th mtg., paras. 55-56.



State in administering its domestic affairs. The establishment of the commission proposed in the eighteen-power draft resolution would be tantamount to interference in the legislation of the South African Government. On the other hand the Brazilian amendment to paragraph 1 of the operative part of that text would render the proposed commission inoperative and reduce the entire issue to an academic discussion. While Peru did not underestimate the moral factors involved in the debate it felt that any coercion would exacerbate South African nationalism and would stiffen the resistance of the South African Government. Moreover, any form of intervention in South Africa's domestic affairs would establish a dangerous precedent.

(13) Colombia

Colombia exhibited the same doubts on the competence of the Assembly to adopt the eighteen-power draft resolution, although she felt that human rights were to some extent within the competence of the United Nations. Her delegate said that the debate which had taken place had enabled the Assembly to go thoroughly into the question and that it was therefore unnecessary to set up the proposed commission. He took particular exception to the fact that it was not known under what Article of the Charter it was proposed to set up the commission. Colombia would have preferred, her delegate said, that the Committee direct an appeal to all Member States to harmonize their policies with the pledge they had undertaken in signing the Charter to ensure respect for human rights. She took this position because of the fact that racial discrimination was to be found in all countries and in order to avoid any interference in the domestic affairs of South Africa.<sup>1</sup>

(14) Argentina

Explaining his country's vote on the eighteen-power draft resolution, the Argentinian delegate said that he had abstained 'on the basis of the principle of non-intervention in the domestic affairs laid down in the Charter'.<sup>2</sup> Nevertheless

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1. *ibid*, 21st mtg., paras. 12-13.

2. *ibid*, para. 50.

the principle of non-intervention did not prevent her from voting in favour of the Scandinavian draft.

(b) The Scandinavian Draft Resolution.

The amendments to the eighteen-power draft resolution introduced by Norway on behalf of herself, Denmark, Iceland, and Sweden,<sup>1</sup> were subsequently reintroduced as a separate resolution sponsored by the same Governments.<sup>2</sup> The text was as follows:<sup>3</sup>

The General Assembly,

Having taken note of the communication dated 12 September 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, Indonesia, India, Iraq, Iran, Lebanon, Pakistan, Philippines, Syria, Saudi-Arabia, and Yemen, regarding the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,

Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling that the General Assembly declared in its resolution 103(I) that it is in the higher interests of humanity to put an end to religious and so-called racial persecution and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

Recognizing that the methods for discharging the responsibility of Members under the Charter and for giving effect to their Charter pledges may vary with circumstances such as the social structure of the State concerned and the different stages of development of the various groups involved,

1. Declares that in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political

1. Supra, p. 128.

2. G.A., (VII), Ad Hoc Pol. Com., 20th mtg., para. 1.

3. *ibid*, Annexes, Vol. II, a.i.66, p.4, Doc.A/AC.61/L.12.

participation of all racial groups is on a basis of equality;

2. Affirms that the governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter;

5. Solemnly calls upon all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms.

It will be noted that this draft resolution is composed of the first three paragraphs of the preamble of the eighteen-power draft resolution plus the terms of the original Scandinavian amendments to that draft resolution.

(c) Voting on the Draft Resolutions.

(1) The Eighteen-Power Draft Resolution.

The eighteen-power draft resolution as amended,<sup>1</sup> was adopted by the Ad Hoc Political Committee by 35 votes to 2, with 22 abstentions,<sup>2</sup> and by the

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1. The text adopted by the committee incorporated the amendments proposed by Brazil, Mexico, and the Soviet Union, (see Annexes, Vol. II, p.7, para.17, Doc.A/2276) and the first two points of the Ecuadorean amendments (see supra, p.135 fn. 2.)

2. G.A., (VII), Ad Hoc Pol. Com., 21st mtg., para. 42. The details were as follows:

In favour: Mexico, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, Ethiopia, El Salvador, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia.

Against: Peru, Union of South Africa.

Abstentions: Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Turkey, Sweden, U.K., U.S.A., Argentina, Australia, Belgium, Canada, China, Colombia, Denmark, Dominican Republic, France, Greece, Iceland, Venezuela.

plenary session of the General Assembly by 35 votes to 1 with 23 abstentions.<sup>1</sup>

(ii) The Scandinavian Draft Resolution.

The Scandinavian Draft Resolution was adopted in committee by 20 votes to 7, with 32 abstentions,<sup>2</sup> and in the plenary session by 24 votes to 1, with 34 abstentions.<sup>3</sup>

1. G.A., (VII), Plen., 401st mtg., para. 98. Res. 616<sup>A</sup>(VII). The details of voting were as follows:

In favour: El Salvador, Ethiopia, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt.

Against: Union of South Africa.

Abstentions: France, Greece, Iceland, Luxembourg, Netherland, New Zealand, Nicaragua, Norway, Paraguay, Peru, Sweden, Turkey, U.K., U.S.A., Venezuela, Argentina, Australia, Belgium, Canada, China, Colombia, Denmark, Dominican Republic.

2. G.A., (VII), Ad Hoc Pol. Com., 21st mtg., para.45. The details of voting were as follows:

In favour: Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, El Salvador, Iceland, Israel, Netherlands, Nicaragua, Norway, Paraguay, Peru, Sweden, U.S.A., Uruguay, Argentina, Brazil.

Against: Czechoslovakia, Mexico, Poland, Ukrainian S.S.R., Union of South Africa, U.S.S.R., Byelorussian S.S.R.

Abstentions: Dominican Republic, Ecuador, Egypt, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Luxembourg, New Zealand, Pakistan, Panama, Philippines, Saudi-Arabia, Syria, Thailand, Turkey, U.K., Venezuela, Yugoslavia, Afghanistan, Australia, Belgium, Bolivia, Burma.

3. G.A., (VII), Plen., 401st mtg., para.105; Res. 616<sup>B</sup>(VII). The details of voting were as follows:

In favour: El Salvador, Guatemala, Iceland, Israel, Mexico, Netherlands, Norway, Pakistan, Panama, Paraguay, Peru, Sweden, U.S.A., Uruguay, Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark.

Against: Union of South Africa.

Abstaining: Dominican Republic, Ecuador, Egypt, Ethiopia, France, Greece, Haiti, Honduras, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Luxembourg, New Zealand, Nicaragua, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Turkey, Ukrainian S.S.R., U.S.S.R., U.K., Venezuela, Yugoslavia, Afghanistan, Australia, Belgium, Burma, Byelorussian S.S.R., Czechoslovakia.

(d) Conclusions:

Taking into account that a considerable number of the States present and voting did not consider that the matter was within the domestic jurisdiction of the Union of South Africa,<sup>1</sup> and that therefore the issue of intervention for them did not arise, certain facts about the nature of intervention become evident from this debate.

It is clear that while a few States did take up a very rigid attitude on what constitutes intervention, the majority which were concerned with this problem were prepared to adopt a much more flexible attitude. These States were Argentina, Brazil, Canada, China, Colombia, Costa Rica, Denmark, Ecuador, Mexico, Norway, Netherlands, Peru, Sweden and the United States. Not all these States took the same view of what does constitute intervention in the domestic affairs of a particular State. However, it is important to note that all of them were united in the belief that the United Nations has the power to adopt some kind of recommendation without being guilty of intervention in domestic affairs. None of them espoused the view that as the item was domestic all discussions thereof and recommendations thereon were illegal.<sup>2</sup> Each of them, in her own way, supported the idea that the question of competence is a specific one, to be decided with reference to a

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1. The following states, either expressly or by implication, maintained that the matter was not domestic: Czechoslovakia, Pakistan, Haiti, Indonesia, Uruguay, Burma, Saudi-Arabia, India, Byelorussian S.S.R., Cuba, Yugoslavia, Iran, Israel, Chile, Ethiopia, Afghanistan, Honduras, Guatemala, Ukrainian S.S.R. and U.S.S.R. See mtgs., 16-20 of the Ad Hoc Pol.Com., Greece, Liberia, Bolivia did not deal with the issue of domestic jurisdiction.

2. But see supra, p.131, the statement of the Netherlands.

specific proposal, and not a general question which, if it were decided in South Africa's favour, would rule out all United Nations action on the subject.

The attitudes towards the two resolutions varied considerably, and are not without interest for the present purpose. For example, some States were prepared to discuss this item, relating as it did to a particular country, but were not prepared to support any resolution which was addressed to one particular State. They appeared to attach considerable importance to the form of the recommendation and the fact that the Scandinavian resolution was in reality as explicit in its way as the eighteen-power one does not appear to have bothered them.

Of the fourteen States dealt with here only four - Brazil, Costa Rica, Ecuador and America - voted in favour of the eighteen-power draft resolution in the plenary session. The rest abstained. On the other hand, only Ecuador did not vote in favour of the Scandinavian draft in the plenary session. On the basis of this analysis therefore, it seems that the majority of States considering the question of intervention viewed the formation of a commission to study the racial policies of a particular State as intervention in its domestic affairs, or at least had sufficient doubts regarding its legality as to render it a dubious procedure.

## 2. The Eighth, Ninth, and Tenth Sessions.

At these sessions little that is of any use for the present purposes was added by the States which took part in the debates.

### (a) States which adhered to the non-technical interpretation of intervention.

As was to be expected, certain States adhered to the view that as the question of race conflict in South Africa was within the domestic jurisdiction

of that country, the United Nations had no competence in the matter. Those States included Australia,<sup>1</sup> Belgium,<sup>2</sup> Colombia,<sup>3</sup> France,<sup>4</sup> Peru,<sup>5</sup> and the United Kingdom.<sup>6</sup> At the eighth session of the Assembly Greece<sup>7</sup> and Luxembourg<sup>8</sup> also voted in favour of the South African motion denying the competence of the General Assembly to adopt the resolution before it. It will be evident that in making this assertion, a certain degree of inconsistency must be attributed to Colombia and Peru.<sup>9</sup>

(b) States which adhered to the technical interpretation of intervention.

Just as a few States adhered to the non-technical view of intervention, so too some maintained that it meant dictatorial interference. These included Ecuador,<sup>10</sup> Guatemala,<sup>11</sup> India,<sup>12</sup> and Syria.<sup>13</sup>

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1. G.A., (VIII), Ad Hoc Pol.Com. 56th mtg., paras. 10-24; *ibid*, 9th session, 44th mtg., para. 1; *ibid*, 10th session, 11th mtg., paras. 46-53.
  2. *ibid*, 8th session, 52nd mtg., para. 54; *ibid*, 9th session, 45rd mtg., para. 18; *ibid*, 10th session, 11th mtg., paras. 13-15.
  3. *ibid*, 8th session, 53rd mtg., paras. 41-47; *ibid*, 58th mtg., paras. 21-33; *ibid*, 9th session, 44th mtg., para. 50.
  4. *ibid*, 8th session, 58th mtg., paras. 1-16; *ibid*, 9th session, 47th mtg., para. 51.
  5. *ibid*, 10th session, 11th mtg., paras. 56-59.
  6. *ibid*, 8th session, 54th mtg., paras. 1-14; *ibid*, 9th session, 43rd mtg., paras. 1-2; *ibid*, 10th session, 5th mtg., para. 25.
  7. G.A., (VIII), Plen., 469th mtg., para. 52.
  8. *ibid*.
  9. Cf. these attitudes with those adopted in the previous session; see *supra*, pp. 141 and 140 resp.
  10. G.A., (VIII), Ad Hoc Pol.Com., 56th mtg., paras. 25-41; *ibid*, 10th session 7th mtg., para. 25.
  11. *ibid*, 10th session, 8th mtg., para. 2.
  12. *ibid*, 9th mtg., para. 30.
  13. *ibid*, 8th session, 55th mtg., para. 15.

In adhering to the technical interpretation of intervention in these debates Ecuador departed from the views which she had expressed on other occasions, both in connection with this case and others. In other places she had opposed certain recommendations on the grounds that they would have constituted intervention in the domestic affairs of the States concerned. In particular, she declined to support any recommendation which requested South Africa to suspend the operation of any of her legislation. It might well be asked why she did this if, in her opinion, intervention carried the technical meaning of dictatorial interference? Ecuador's position is somewhat obscure.

This confusion is not lessened when statements made by Ecuador at the ninth session are compared with those she made at the eighth and tenth. At the ninth session, she appeared to suggest that any recommendation which exerted pressure on South Africa contravened Article 2(7), whereas in the other two sessions here cited she maintained that no recommendation could do so.<sup>1</sup>

(c) States which were uncertain on the question of competence.

A third group of States was uncertain on the competence of the United Nations to entertain this question and would have preferred an advisory opinion from the International Court of Justice on the subject. These States included, Denmark,<sup>2</sup> New Zealand,<sup>3</sup> the Netherlands<sup>4</sup> and Norway.<sup>5</sup> Turkey also indicated

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1. *ibid*, 9th session, 44th mtg., paras. 19-20; and G.A., (IX), Plen., 511th mtg., para. 110.

2. G.A., (VIII), Ad Hoc Pol.Com., 36th mtg., paras. 44-45.

3. *ibid*, 39th mtg., paras. 40-46; *ibid*, 10th session, 8th mtg., para. 48.

4. *ibid*. 8th session, 42nd mtg., paras. 21-25.

5. *ibid*. 39th mtg., paras. 25-30.



her doubts on the competence of the United Nations, and in view of this, indicated her intention to abstain in all votes.<sup>1</sup>

(d) The Compromise View.

Just as in other cases, and in the previous discussion of this item, so here, there was opposed to the two extreme interpretations of the word 'intervene' a third one. As in other debates, States which espoused this point of view were prepared to support a certain amount of United Nations action, while at the same time opposing forms of action which they considered would constitute intervention.

Some States were prepared to allow the United Nations to discuss this matter and as a result thereof to adopt recommendations of a general character on the subject of racial discrimination addressed to the generality of States. Others were prepared to go slightly further and to support recommendations addressed to South Africa itself, provided that they did not exert pressure on that State to carry out specific measures.

The views expressed are, on the one hand, varied, and on the other, not sufficiently numerous to allow any detailed conclusions to be drawn as to the existence of any consensus on exactly what form of action the United Nations is competent to take where a matter does fall essentially within the domestic jurisdiction of a Member. However, it will at least be seen that nations are alive to the problem of intervention, on the one hand, and on the other, are not disposed to dismiss all forms of United Nations action as intervention just because a matter falls within the domestic jurisdiction of a particular State, or because the jurisdiction of the United Nations is doubtful. As in other

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1. *ibid*, 42nd mtg., para. 57.

places there are the same attempts to arrive at some compromise solution.

(1) Greece.

At the eighth session of the General Assembly, the Greek delegate told the Ad Hoc Political Committee that his country had throughout contested the Assembly's competence to consider the question. Greece held that the matter was essentially within the domestic jurisdiction of South Africa and that consequently the United Nations had no right to intervene therein. However, the Greek delegation had voted in favour of the inclusion of this item in the agenda out of deference to the resolutions adopted thereon at the previous session, but this in no way, the Greek delegate said, altered his position on the question of competence.<sup>1</sup>

These statements are conducive to the conclusion that Greece would oppose any form of United Nations action with respect to this subject, and indeed, at the previous session she had abstained on even the Scandinavian draft resolution. However, at this session, she appears to have changed her mind. The Greek delegate, continuing his speech, said that:<sup>2</sup>

The South African Government was in fact being charged, first, with having created, by its policy of apartheid, a dangerous situation that constituted a threat to international peace and security and, second, with having flouted the principle of respect for human rights. ... With regard to the second charge, in reply to those who contended that any action on the part of the United Nations might be precluded if the principle of non-intervention was invoked to debar application of the Charter provisions relating to human rights, he would say that it was wrong to suppose that the provisions of Article 2, paragraph 7, were completely irreconcilable with those of the various articles of the Charter relating to human rights. A distinction should be made between the Assembly's power to

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1. G.A., (VIII), Ad Hoc Pol. Com., 53rd mtg., paras. 35-37.

2. *ibid*, paras. 58-59; emphasis added.

discuss a matter and to initiate investigations, and its power to make recommendations. The Assembly would not be able to make a recommendation on a matter within the domestic jurisdiction of a State without intervening in its internal affairs, but the discussion and examination of such a question by the Assembly might not constitute interference in the domestic affairs of States, if the Assembly took no further action.

In including the question of racial conflict in South Africa in its agenda on two occasions, and by setting up the Commission, the Assembly had reached the extreme limits of its powers. It should avoid creating a dangerous precedent and should be careful not to pass judgement on the racial situation in South Africa. It should not regard itself as authorized to dictate the racial policy which the South African Government should adopt.

(ii) Canada.

At the eighth session of the General Assembly, the Canadian delegate said that:<sup>1</sup>

.... In view of the possible international repercussions of South Africa's racial policies and of the obligation incumbent upon member States to promote human rights, the Canadian delegation felt no doubt of the United Nations competence to discuss the issue of race conflict.

The South African draft resolution was also unsatisfactory in that it left undecided what constituted intervention, a problem which was not brought closer to solution by the restatement of Article 2, paragraph 7. Canada agreed that there were serious doubts as to whether the establishment of the Commission by the Assembly at its seventh session and its continuance by the Assembly at its present session amounted to intervention. That was one of the reasons why it had abstained in the vote on the subject at the seventh session. ....

Nevertheless, to contend that the Assembly could make recommendations in any matter whatsoever, at its discretion, would be to deny any effect to Article 2, paragraph 7. Even if it were agreed that that Article prohibited 'dictatorial interference' the term still remained to be defined. ....

His delegation did not propose to attempt to solve the legal riddle, but believed that a practical approach was possible. A discussion on matters of human rights

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1. Ad Hoc Pol.Com., 35th mtg., paras. 19-25; emphasis added; see further, G.A., (X) Ad Hoc Pol.Com., 12th mtg., para. 16.

could do some good. It was to be hoped that the present discussion and general concern expressed regarding South Africa's racial policies which many regarded as being in conflict with the Charter, would have some effect in that it might bring the pressure of public opinion to bear on Member States. That in itself, would not constitute intervention in the form in which it was prohibited by the Charter. ....

It was, however, questionable whether the Assembly should go beyond discussion and the expression of concern and whether it should take the further steps proposed in the joint draft resolution. ....

(iii) Denmark.

The Danish delegation, as already noted, had certain doubts on the competence of the United Nations to deal with this item and had supported the idea of an appeal to the International Court of Justice for an advisory opinion thereon.<sup>1</sup> However, while she did harbour these doubts, she held the view that the General Assembly was at least competent to discuss the matter and as a result of these discussions to adopt recommendations of a general nature addressed to all States on the subject of racial discrimination. Her doubts on competence were particularly centred on the question of recommendations addressed to South Africa itself.

Speaking in the debate at the eighth session the Danish delegate, Mr. Lannung said that:<sup>2</sup>

.... his delegation had said at the previous session that the United Nations should have the right to discuss the problem of apartheid, but that it should exercise that right with self-restraint and moderation and tolerance. But beyond the right to discuss that matter a legitimate doubt existed regarding the competence of the United Nations to deal with the question. Like the Belgian and some other delegations, the Danish delegation believed that Articles 10 and 14 of the Charter authorized the General Assembly to exercise in the form of general recommendations, wide powers in respect of questions within the domestic

1. Supra. p. 148.

2. G.A., (VIII), Ad Hoc Fol.Com., 36th mtg., paras. 42-43; emphasis added.

jurisdiction of Member States. But it was quite a different matter when it was a question of determining the competence of the United Nations to pass judgement on specific legislation.

In the light of those considerations, the Danish delegation had the previous year supported a draft resolution which had not been addressed to any specific country and had called upon all Member States to bring their policies into conformity with their obligations under the Charter. ....

(iv) The United States.

At the eighth session, the United States made no pronouncement on the status of specific recommendations addressed to particular states. However, she did indicate that, in her opinion, discussion did not constitute intervention. In addition to this she recalled her support for resolution 616B(VII) at the previous session of the General Assembly. The American delegate, Mrs. Bolton, said that in her country's opinion, this resolution represented the best way in which the General Assembly could discharge its responsibilities in this matter. This resolution, she reminded the Committee, was not directed at any particular State, but yet everyone knew what it meant in connection with the policy of apartheid.<sup>1</sup> The inference to be drawn from this statement is that such a recommendation did not constitute intervention in the domestic affairs of South Africa.

(v) Sweden.

At these three sessions Sweden maintained the position which she had adopted at the seventh. She continued to oppose any recommendations which sought to specify the measures which a particular State should take in order to solve a certain problem. However she asserted the right of the Assembly to call on a State to reconsider its position in the light of the Charter

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1. *ibid*, 57th mtg., paras. 27.

provisions.<sup>1</sup>

(vi) New Zealand.

New Zealand, as noted above, was doubtful of the competence of the United Nations in this matter. However, these doubts did not prevent her from supporting a general recommendation on the subject of racial discrimination addressed to all States.<sup>2</sup> She did not, apparently, consider that any such recommendation would be tainted with illegality because it had originated in a discussion of the domestic affairs of South Africa as had, for example, the United Kingdom, France and Belgium.

(vii) The Netherlands

The Netherlands expressed the view that the United Nations had a limited competence with respect to questions of human rights. However, she objected to the fact that this jurisdiction was being exercised selectively against South Africa. This, in her opinion, was indefensible.<sup>3</sup>

(viii) Norway.

Like other Scandanavian countries and in keeping with her own stand on this question at other sessions, Norway opposed too broad an interpretation of the word 'intervene' which would rule out all United Nations activity in such matters. On the other hand, she was not prepared to support detailed criticisms of South African legislation. However, she did indicate her support for recommendations which were of a general nature and were addressed to the generality of States.

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1. G.A., (VIII), Ad Hoc Pol.Com., 53rd mtg., paras. 48-49; *ibid*, 9th session 47th mtg., para. 71; and *ibid*, 10th session, 5th mtg., para. 2.

2. G.A., (X), Ad Hoc Pol.Com., 8th mtg., para. 50.

3. *ibid*, 12th mtg., para. 1.

At the tenth session, her delegate said that:<sup>1</sup>

He would support any proposals reaffirming previous resolutions of the General Assembly concerning human rights and urging Member States to abstain from racial discrimination, which was incompatible with their obligations under the Charter. His Government would be chary, however, of supporting more detailed recommendations on specific points, for such recommendations might infringe the domestic jurisdiction of States referred to in Article 2, paragraph 7 of the Charter. ...

He would vote for the second and third paragraphs of the preamble of the joint draft resolution (A/AC.80/L.1) and abstain on the first paragraph because it referred to all the previous resolutions on the question, some of which his Government had not supported. He would vote for paragraphs 4 and 5 of the operative part of the text, but not for paragraph 6, which was superfluous and inaccurate, introducing, as it did, the word 'obligations' which did not appear in Article 56 of the Charter.

(e) Substantive Resolutions Proposed at these sessions, and the voting thereon.

(i) The Eighth Session.

At the eighth session of the General Assembly, the Ad Hoc Political Committee recommended the following resolution to the General Assembly:<sup>2</sup>

The General Assembly,

Having considered the report of the United Nations Commission on the Racial Situation in the Union of South Africa established under resolution 616A(VII) of 5 December 1952,

Noting with concern that the Commission, in its study of the racial policies of the Government of the Union of South Africa, has concluded that these policies and their consequences are contrary to the Charter and the Universal Declaration of Human Rights,

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1. G.A., (X), Ad Hoc Pol. Com., 12th mtg., paras. 4-5; see also, *ibid*, 8th session, 39th mtg., para. 31.
  2. G.A., (VIII), Annexes, a.i., 21, Doc.A/2610, p.5, para.20. The text had originally been sponsored by the delegations of Afghanistan, Bolivia, Burma, Egypt, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Syria, Saudi-Arabia and Yemen; see *ibid*. The text was amended by Chile, whose amendment added paragraph one of the final text to that proposed by the 17 nations; see *ibid*, p.2, para. 11.

Noting that the Commission has concluded that

(a) 'It is highly unlikely, and indeed improbable, that the policy of apartheid will ever be willingly accepted by the masses subjected to discrimination,' and

(b) That the continuance of this policy would make peaceful solutions increasingly difficult and endanger friendly relations among nations,

Noting further that the Commission considered it desirable that the United Nations should request the Government of the Union of South Africa to reconsider the components of its policy towards various ethnic groups,

Considering that in the Commission's opinion, the time available was too short for a thorough study of all the aspects of the problem assigned to it,

Considering also the Commission's view that one of the difficulties encountered by it was the lack of co-operation from the Government of the Union of South Africa and, in particular, its refusal to permit the Commission to enter its territory,

1. Reaffirms its resolutions 105(I) of 19 November 1946, 577A(V), section E, of 5 November 1950 and 616B(VII) of 5 December 1952, particularly the passages in those resolutions which state respectively that 'it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination'; that 'enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of economic and social well-being in all countries'; and that 'in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when the patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on basis of equality',

2. Expresses appreciation of the work of the United Nations Commission on the Racial Situation in the Union of South Africa,

3. Requests the Commission:

(a) To continue its study of the development of the racial situation in the Union of South Africa:

(i) With reference to the various implications of the situations on the populations affected;

(ii) In relation to the provisions of the Charter and



- in particular to Article 14; and
- (b) To suggest measures which would help to alleviate the situation and promote a peaceful settlement;
4. Invites the Government of the Union of South Africa to extend its fullest co-operation to the Commission;
5. Requests the Commission to report to the General Assembly at its ninth session.

This text was adopted by the Ad Hoc Political Committee by 37 votes to 10, with 9 abstentions.<sup>1</sup>

The recommendation, with the addition of an administrative paragraph,<sup>2</sup> was adopted by the General Assembly in plenary session by 58 votes to 11, with 11 abstentions.<sup>3</sup>

(ii) The ninth Session.

At the ninth session, the Ad Hoc Political Committee recommended the

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1. G.A., (VIII), Ad Hoc Pol. Com., 42nd mtg., para. 69; the details of voting were as follows:
- In favour: Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia.
- Against: Australia, Belgium, Canada, France, Greece, Netherlands, New Zealand, Union of South Africa, U.K.
- Abstaining: Argentina, China, Denmark, Norway, Peru, Sweden, Turkey, U.S.A., Venezuela.
2. This paragraph, proposed by the delegations of Chile, and Uruguay read: "Decides that should any members of the Commission be unable to continue their membership, the member or members shall, if the General Assembly is not sitting, be replaced by a person or persons appointed by the present President of the General Assembly in consultation with the Secretary-General." See *ibid*, Plen., 469th mtg., para. 6.
3. *ibid*, para. 66, Res. 721(VIII). The details of voting were as follows:
- In favour: U.S.S.R., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian S.S.R., Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Paraguay, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R.
- Against: U.K., Australia, Belgium, Canada, Colombia, France, Greece, Luxembourg, Netherlands, New Zealand, Union of South Africa.
- Abstaining: U.S.A., Venezuela, Argentina, China, Denmark, Dominican Republic, Norway, Panama, Peru, Sweden, Turkey.

following resolution to the General Assembly:<sup>1</sup>

The General Assembly,

Having Considered the second report (A/2719) of the United Nations Commission on the Racial Situation in the Union of South Africa,

Recalling General Assembly resolution 103(I), which states that it is in the higher interests of humanity to put an end to racial persecution and discrimination, and resolutions 395(V) and 511(VI),

Further recalling that the Commission, in its first report, had concluded that the racial policies of the Government of the Union of South Africa are contrary to the United Nations Charter and to the Universal Declaration of Human Rights,

Noting with apprehension the adoption of new laws and regulations by the Union Government which in the Commission's view are also incompatible with the obligations of that Government under the Charter,

Noting further the profound conviction of the Commission that the policy of apartheid constitutes a grave threat to the peaceful relations between ethnic groups in the world,

1. Commends the United Nations Commission on the Racial Situation in the Union of South Africa for its constructive work;

2. Notes with regret that the Government of the Union of South Africa again refused to co-operate with the Commission;

3. Notes the Commission's suggestions for facilitating a peaceful settlement of the problem contained in paragraphs 368 to 384 of its report (A/2719);

4. Invites the Government of the Union of South Africa to reconsider its position in the light of the high principles expressed in the United Nations Charter, taking into account the pledge of all Member States to respect human rights and fundamental freedoms without distinction as to race; and further taking into account the valuable experience of other multi-racial societies as set forth in Chapter VII of the Commission's report:

5. Further invites the Government of the Union of South Africa to take into consideration the suggestions of the Commission for a peaceful settlement of the racial

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1. See G.A., (IX), Annexes, a.i., 23, p.7, Doc.A/260. This resolution had been sponsored by the delegations of Afghanistan, Bolivia, Burma, Chile, Costa Rica, Egypt, Ethiopia, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi-Arabia, Syria, Yemen and Yugoslavia.

problem, namely, those detailed in paragraphs 370 to 383 of its report;

6. Requests the Commission to keep under review the problem of race conflict in the Union of South Africa;

7. Requests the Commission to report to the General Assembly at its tenth session;

8. Decides that should any of the members of the Commission be unable to continue their membership, the member or members concerned shall, if the General Assembly is not sitting, be replaced by a person or persons appointed by the present President of the General Assembly in consultation with the Secretary-General.

In the Ad Hoc Political Committee, this resolution was adopted by 34 votes to 9, with 10 abstentions.<sup>1</sup>

The plenary session adopted this recommendation by 40 votes to 10, with 10 abstentions.<sup>2</sup>

(iii) The Tenth Session.

At the tenth session, the Ad Hoc Political Committee recommended the

1. See G.A., (IX), Ad Hoc Pol. Com. 47th mtg., para. 69. The details of voting were as follows:

In favour: Czechoslovakia, Ecuador, Egypt, Ethiopia, Greece, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Norway, Pakistan, Panama, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Burma, Byelorussian S.S.R., Chile.

Against: France, Netherlands, New Zealand, Union of South Africa, U.K., Australia, Belgium, Canada, Colombia.

Abstaining: Cuba, Denmark, Guatemala, Peru, Turkey, U.S.A., Venezuela, Argentina, Brazil, China.

2. Ibid, Plen., 511st mtg., para. 129; Res. 820(IX). The details of voting were as follows:

In favour: Ethiopia, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Burma, Byelorussian S.S.R., Chile, Costa Rica, Czechoslovakia, Ecuador, Egypt, El Salvador,

Against: France, Luxembourg, Netherlands, New Zealand, Union of South Africa, U.K., Australia, Belgium, Canada, Colombia.

Abstaining: Peru, Turkey, U.S.A., Venezuela, Argentina, Brazil, China, Cuba, Denmark, Dominican Republic.

following resolution to the General Assembly.<sup>1</sup>

The General Assembly,

Recalling its previous resolutions on the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa;

Recalling section E of resolution 377(V) in which the General Assembly has expressed its conviction that a genuine and lasting peace depends also upon the observance of all the principles and purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the General Assembly and the principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all,

Reiterating its resolutions 103(I) and 616B(VII) in which the General Assembly has declared, among other things, that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination; and that governmental policies which are designed to perpetuate or increase discrimination are inconsistent with the pledges of the Members under Article 56 of the Charter,

Noting that the United Nations Commission on the Racial Situation in the Union of South Africa has now submitted its third report,

1. Commends the Commission for its constructive work;
2. Notes with regret that the Government of the Union of South Africa again refused to co-operate with the Commission;
3. Recommends to the Government of the Union of South Africa to take note of the Commission's report;
4. Expresses its concern at the fact that the Government of the Union of South Africa continues to give effect to the policies of apartheid, notwithstanding the request made to it by the General Assembly to reconsider its position in the light of the high principles contained in the Charter and taking into account the pledge of all Member States to promote respect for human rights and fundamental freedoms without distinction as to race;
5. Reminds the Government of the Union of South Africa of the faith it had reaffirmed, in signing the Charter, in fundamental human rights and in the dignity and worth of the human person;
6. Calls on the Government of the Union of South Africa to observe the obligations contained in Article 56 of the Charter;
7. Requests the Commission to keep under review the racial situation in South Africa, including, as the General

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1. See G.A., (X), Annexes, a.i., 23, p. 1, Doc.A/AC.80/L.1. The text had been proposed by 17 nations, viz., Afghanistan, Bolivia, Burma, Egypt, Ethiopia, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi-Arabia, Syria, Yemen.

Assembly hopes, improvement, if any, in the situation, and to report to the General Assembly at its eleventh session;

8. Decides that should any members of the Commission be unable to continue their membership, the member or members shall, if the General Assembly is not sitting, be replaced by a person or persons appointed by the present President of the General Assembly in consultation with the Secretary-General;

9. Requests the Secretary-General to provide the Commission with the necessary staff and facilities;

10. Requests further the Union of South Africa to extend its fullest co-operation to the Commission.

In the Ad Hoc Political Committee this recommendation was adopted by 37 votes to 7, with 13 abstentions.<sup>1</sup>

The General Assembly, however, rejected paragraphs 7 and 8 and hence the United Nations Commission on the Racial Conflict in the Union of South Africa was discontinued.<sup>2</sup>

1. G.A., (X), Ad Hoc Pol. Com., 12th mtg., para. 44. The details of voting were as follows:

In favour: Afghanistan, Bolivia, Burma, Byelorussian S.S.R., Chile, Costa Rica, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi-Arabia, Sweden, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Canada, Netherlands, New Zealand, Union of South Africa, U.K.

Abstaining: Argentina, Brazil, China, Colombia, Cuba, Denmark, Honduras, Nicaragua, Norway, Peru, Turkey, U.S.A., Venezuela.

2. Paragraph 7 of the operative part was rejected as it did not receive a two-thirds majority. The details of voting were, 53 in favour, 17 against, 9 abstentions, as follows:

In favour: Byelorussian S.S.R., Chile, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Burma;

Against: Canada, Cuba, Denmark, France, Israel, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Peru, U.K., U.S.A., Venezuela, Australia, Belgium, Brazil.

Abstaining: China, Colombia, Costa Rica, Dominican Republic, Honduras, Iceland, Sweden, Turkey, Argentina.

Paragraph 8 was rejected for the same reason. No roll call was taken. The whole resolution, as amended, was adopted by 41 voted to 6, with 8 abstentions. No roll call was taken. See G.A., (X), Plen., 551st mtg., paras. 45-46; Res. 917(X).

### 3. The Eleventh, Twelfth and Thirteenth Sessions.

The pattern of the previous sessions is continued in these three. Certain States maintained that the matter was domestic and that as a consequence the United Nations had no competence at all.<sup>1</sup> The vast majority however were of the opinion that the matter was not domestic and so no question of intervention arose. In between these two positions there was the compromise. Some States doubted the extent of the jurisdiction of the United Nations in this matter but were prepared to at least discuss it, and even adopt some kind of recommendation thereon. The recommendations which were acceptable to States of this persuasion varied of course, but in the now familiar way. Some would discuss the specific question but would only accept recommendations which were addressed to the generality of States. Others were prepared to accept mild resolutions addressed directly to South Africa. Furthermore, in these sessions also, some States which were of the opinion that the matter was not domestic nevertheless objected to certain clauses in the proposed resolutions as they were afraid that they amounted to intervention. As before, the trend was to examine the resolutions proposed and to decide on the basis of the action which they sought whether or not they amounted to intervention.

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1. Australia: G.A.,(XI), Sp.Pol.Com., 15th mtg., para. 11; *ibid*, 12th session, 57th mtg., paras. 22-23; *ibid*, 15th session, 94th mtg. paras. 20-25.  
Belgium: *ibid*, 11th session, 12th mtg., para.18; *ibid*, 12th session, 57th mtg., paras. 24-26; *ibid*, 15th session, 94th mtg., para. 27.  
Dominican Republic: *ibid*, 12th session, 57th mtg., para. 39; *ibid*, 15th session, 94th mtg., paras. 17-19.  
Portugal: *ibid*, 12th session, 57th mtg., para 40; *ibid*, 15th session, 94th mtg., para. 24.  
Spain: *ibid*, 15th session, 90th mtg., paras. 32-36.  
United Kingdom: *ibid*, 12th session, 57th mtg., paras. 35-37; *ibid*, 15th session, 94th mtg., paras. 9-13.

South Africa was absent from these debates and in general, regret was expressed at this. The general tone of the debates was conciliatory, even on the part of those who considered that the matter was entirely within the competence of the United Nations. Moreover there was evident in the debates - not in actual concrete terms but rather in expressions of sentiment and in the general tone of the speeches - a view that perhaps a resolution aiming at conciliation would not be so offensive to South Africa and that she might be persuaded as a consequence to co-operate. The principal effort at these sessions was not to condemn South Africa outright but to find some means of inducing her to review her policies. It appears to have been a general feeling that resolutions aimed at conciliation would not raise, to the same extent, the legal aspects of the matter and that therefore South Africa would not take the same exception to them.<sup>1</sup>

(a) The Compromise View.

(i) New Zealand

At each of these three sessions the New Zealand delegation pursued the middle-of-the road policy which she had followed on prior occasions. She had doubts as to the extent of the competence of the United Nations to deal with this matter but felt that it was at least competent to discuss it and as a result of these discussions to adopt a recommendation reminding all States of their responsibilities to promote and respect human rights.<sup>2</sup> New Zealand told

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1. While examining the material tending to demonstrate the desire to adopt a compromise definition of intervention, it is worth while noting that the need to define the concept of intervention vis à vis the rest of the Charter was brought to the attention of the United Nations forcefully by Venezuela in the debate on the subject at the 13th session; See G.A. (XIII), Sp.Pol.Com. 88th mtg., pp. 21-25.

2. G.A., (XI), Sp.Pol.Com., 14th mtg., paras. 35-35; *ibid*, 12th session, 53rd mtg., paras. 37-43; *ibid*, 13th session, 90th mtg., paras. 27-30.

the Special Political Committee that its objective was to secure an improvement in the situation in South Africa but reminded it that such an improvement could only be achieved as a result of a change of opinion in South Africa. The General Assembly could not impose such a change which depended upon factors beyond its control. In seeking to ameliorate the situation the Assembly should take note, the New Zealand delegate said, of the balance which existed in the Charter between the various provisions. The Charter, he reminded the Members, established a relationship between the rights of States and the rights of human beings. On the one hand, the United Nations could not disregard the provisions of the Charter protecting the rights of States to conduct their own affairs without interference; and on the other, it should seek to give practical expression to those provisions of the Charter which were directed towards equality of rights for all.

The New Zealand delegate believed that it would be a mistake to brush aside the immense difficulties which faced South Africa and that the advocacy of extreme measures might only increase the estrangement of that country from the United Nations. Equally, however, the United Nations could not disregard the anxiety which the South African policy of apartheid had aroused in the world. In New Zealand's opinion, a resolution which reminded all Members of their obligations under the Charter would be best suited to the exigencies of the situation.<sup>1</sup>

At the thirteenth session, however, New Zealand went further than was her usual wont. Her delegate indicated that he was prepared to consider 'sympathetically' a more specific resolution which recorded the Assembly's concern in regard to the question before it, provided that was, such a resolution was moderate and

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1. See the references fn. 2. p. 163, in partic. G.A., (XIII), Sp. Pol. Com., 90th mtg., paras. 27-30.



constructive, and left the way open for a positive response from South Africa.<sup>1</sup>

(ii) Canada.

Canada too continued to differentiate between recommendations which she felt to be within the competence of the General Assembly and those which she did not. For example, at the eleventh session, she was of the opinion that the draft five-power resolution<sup>2</sup> might involve constitutional problems but reserved her judgement on the Philippine draft.<sup>3</sup> At the thirteenth session, she indicated that she was willing to accept a resolution calling upon all Member States to bring their policies into line with their obligations.<sup>4</sup>

(iii) Mexico

The care with which delegates avoided the charge of intervention is further demonstrated by the statements of Mexico at the eleventh session. At this session Mexico had voted for the inclusion of the item on the agenda. In general she did not consider that the matter was essentially within the domestic jurisdiction of the Union. And yet still she was careful to avoid supporting a clause of the resolution adopted by this session which seemed to call upon the Union Government to revise its domestic legislation. Mexico doubted if the General Assembly were competent to make recommendations of that kind.<sup>5</sup>

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1. G.A., (XIII), Sp.Pol.Com., 90th mtg., para. 30.

2. See *infra*, p. 168.

3. See *infra*, p. 169.

4. G.A., (XIII), Sp.Pol.Com., 92nd mtg., paras. 24-27.

5. G.A., (XI), Sp.Pol.Com., 16th mtg., para. 27; *ibid*, Plen. Vol. II, 643th mtg., para. 56; and see clause 3 of Res. 1016(XI), *infra*, p. 169.

(iv) Colombia.

Also at the eleventh session, the Colombian delegate feared that one clause of the resolution in particular might be construed as intervention. However, this did not stop him supporting the rest of it.<sup>1</sup>

(v) Argentina.

The compromise approach to the definition of intervention - considering some recommendations as intervention but not others - found an open supporter at the twelfth session in the delegate of Argentina. Her delegate said that in his Government's opinion, the way in which the South African Government handled the problem of segregation of its population was a matter which did not come within the purview of the United Nations since it was a domestic affair. However, he did not therefore oppose all discussion of the matter and recommendations thereon. He reminded the Members that the action taken by any country with respect to matters within its domestic jurisdiction should always be in keeping with the fundamental principles which inspired and constituted the raison d'être of the United Nations. It was, he said, the duty of Members to adopt such measures as were within their power as would implement the great purposes and principles of the Charter. He added that in this spirit and subject always to the principle of not interfering in the domestic affairs of the Union, his delegation would examine favourably any studies or recommendations by the General Assembly with a view to assisting in the realization of universal respect for and observance of human rights and fundamental freedoms.

In the course of his speech the Argentinian delegate referred to the two schools of interpretation of intervention, but refrained from definitely

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1. G.A., (XI), Plen., 648th mtg., para. 35; see clause 3 of Res. 1016(XI), *infra*. p.

committing himself to either one. However, the whole tenor of his speech suggests that even if a matter is domestic some recommendations are still within the competence of the General Assembly, but not all.<sup>1</sup>

(vi) Sweden.

Sweden adhered to the analysis of the legal aspects which she had given in earlier sessions. She continued to support discussions of and general recommendations on the matter but objected to the direction of specific requests to South Africa to take certain measures with respect to her domestic affairs.<sup>2</sup>

(vii) The Netherlands.

The Netherlands continued to doubt the competence of the United Nations to deal with the matter. But as elsewhere these doubts did not prevent her from approving of a discussion of the item nor supporting a recommendation addressed to all States, as a result thereof, which called on them all to take heed of the relevant Articles of the Charter and the Universal Declaration of Human Rights. However, she continued to object to a recommendation that was specifically addressed to South Africa.<sup>3</sup>

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1. G.A., (XII), Sp.Pol.Com., 54th mtg., paras. 39-48; *ibid*, 15th session, 86th mtg., paras. 16-25.
  2. G.A., (XII), Sp.Pol.Com., 55th mtg., para. 2; 15th session, 93rd mtg., paras. 5-8.
  3. G.A., (XIII), Sp.Pol.Com., 92nd mtg., paras. 15-18; note also the statements of Peru: G.A., (XII), Sp.Pol.Com., 55th mtg., paras. 16-20; *ibid*, 57th mtg., para. 34; of Denmark, G.A., (XIII), Sp.Pol.Com., 93rd mtg., para. 17, and the Philippines, G.A., (XI), Plen. Vol. II, 648th mtg., paras. 34-47.

(b) Resolutions proposed and adopted at the above Sessions.(i) The Eleventh Session.

The General Assembly adopted the following resolution<sup>1</sup> by 56 votes to 5, with 12 abstentions:<sup>2</sup>

The General Assembly,

Recalling its previous resolutions on the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,

Recalling in particular paragraph 6 of the General Assembly resolution 917(X) of 6 December 1955 calling upon the Government of the Union of South Africa to observe its obligations under the Charter of the United Nations,

Noting that resolution 616B(VII), of 5 December 1952 declared inter alia, that governmental policies which are designed to perpetuate or increase discrimination are inconsistent with the Charter,

Further noting that resolution 595(V) of 2 December 1950, 511(VI) of January 12, 1952 and 616A(VII) of 5 December 1952 have successively affirmed that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

Convinced that, in a multi-racial society, harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practices are directed towards ensuring a legal order that will ensure equality before the law and the elimination of discrimination between all persons regardless of race, creed or colour,

Convinced also that a conciliatory approach in accordance with the principles of the Charter is necessary for progress towards a solution of this problem,

1. Deplores that the Government of the Union of South Africa has not yet observed its obligations under the Charter and has pressed forward with discriminatory measures which would make the future observance of these obligations more difficult;

2. Affirms its conviction that perseverance in such discriminatory policies is inconsistent not only with the Charter but with the forces of progress and international co-operation in implementing the ideals of equality, freedom and justice;

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1. See: G.A.,(XI), Annexes, Vol. II, a.i.61, p. 5, Res. 1016(XI).

2. G.A.,(XI), Plen. Vol. II, 648th mtg., para. 61.

3. Calls upon the Government of the Union of South Africa to reconsider its position and revise its policies in the light of its obligations and responsibilities under the Charter and in the light of the principles subscribed to and progress achieved in other contemporary multi-racial societies;

4. Invites the Government of the Union of South Africa to co-operate in a constructive approach to this question, more particularly by its presence in the United Nations;

5. Requests the Secretary-General, as appropriate, to communicate with the Government of the Union of South Africa to carry forward the purposes of the present resolution.

The Philippines also sponsored a resolution before the Special Political Committee.<sup>1</sup> It would have had the Secretary-General contact the South African delegation to invite it to return to the Committee and conduct exploratory talks with a view to solving the problem. However, it was withdrawn.

(ii) The Twelfth Session.

The text of the resolution adopted<sup>2</sup> at this session was as follows:<sup>3</sup>

The General Assembly,

Recalling its previous resolutions, in particular resolution 1016(XI) of 30 January 1957, on the question of race conflict in South Africa resulting from the policy of apartheid of the Government of the Union of South Africa,

1. See G.A., (XI), Annexes, Vol. II, a.i.61, p. 3, Doc.A/SFC/L.5.

2. G.A., (XII), Plen., 723rd mtg., para. 104. The voting - 59:6:14. - was as follows:

In favour: Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Bolivia, Brazil, Bulgaria, Burma, Byelorussian S.S.R., Cambodia, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Japan, Jordan, Laos, Liberia, Lybia, Malaya, Mexico, Nepal, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Sweden, Syria, Thailand, Tunisia, Ukrainian S.S.R., U.S.S.R.

Against: Australia, Belgium, France, Luxembourg, Portugal, U.K.

Abstaining: Argentina, Austria, Canada, Dominican Republic, Finland, Honduras, Italy, Netherlands, New Zealand, Nicaragua, Peru, Spain, Turkey, U.S.A.

3. G.A., (XII), Annexes a.i.60, p. 3, Res. 1178(XII).

Recalling in particular paragraph 6 of General Assembly resolution 917(X) of 6 December 1955, calling upon the Government of the Union of South Africa to observe its obligations under the Charter of the United Nations,

Noting that the General Assembly in resolution 616B(VII) of 5 December 1952, decided, inter alia, that governmental policies which are designed to perpetuate or increase discrimination are inconsistent with the Charter,

Further noting that resolutions 395(V) of 2 December 1950, 511(VI) of 12 January 1952 and 616A(VII) of 5 December 1952 have successively affirmed that a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination,

1. Deplores that the Government of the Union of South Africa has not yet responded to the call and invitation conveyed in paragraphs 3 and 4 of General Assembly resolution 1016(XI) of 30 January 1957;

2. Again draws the attention of the Government of the Union of South Africa to that resolution and, in particular, to paragraphs 3 and 4 thereof;

3. Appeals to the Government of the Union of South Africa, in the interest of the common observance by Members of the United Nations of the high purposes and principles enshrined in the Charter, to which the Government of the Union of South Africa has subscribed and is as much committed as any other Member, to revise its policy in the light of those purposes and principles and of world opinion and to inform the Secretary-General of its response.

(iii) The Thirteenth Session.

At this session the following resolution was adopted:<sup>1</sup>

The General Assembly,

Recalling its previous consideration of the question

1. G.A., (XIII), Plen., 778th mtg., para. 48. The voting - 70:5:4. - was as follows:

In favour: Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, Fed. of Malaya, Finland, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Laos, Lebanon, Liberia, Lybia, Mexico, Morocco, Nepal, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Sweden, Thailand, Tunisia, Turkey, Ukrainian S.S.R., U.S.S.R., U.A.R., U.S.A., Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Austria, Brazil, Bulgaria, Byelorussian S.S.R., Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica.

Against: France, Portugal, U.K., Australia, Belgium.

Abstaining: Dominican Republic, Luxembourg, Netherlands, Spain.

For the text see, G.A., (XIII), Annexes, a.i.67, p.4; Res. 1248(XIII).

of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,

Recalling in particular paragraph 6 of its resolution 917(X) of 6 December 1955 calling upon the Government of South Africa to observe its obligations under the Charter of the United Nations,

1. Declares again that, in a multi-racial society, harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality;

2. Affirms that governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter of the United Nations;

3. Solemnly calls upon all Member States to bring their policies into conformity with their obligations under the Charter to promote the observance of human rights and fundamental freedoms;

4. Expresses its regret and concern that the Government of the Union of South Africa has not yet responded to appeals of the General Assembly that it reconsider governmental policies which impair the right of all racial groups to enjoy the same rights and fundamental freedoms.

#### 4. The Post-Repertory Period - The Fourteenth to Seventeenth Sessions.

In this period objections to the policy of apartheid reached a crescendo and even the United Kingdom came round to the view that the matter was no longer essentially within the domestic jurisdiction of South Africa.<sup>1</sup> There was therefore little in these debates that is of importance for the present purposes. However, certain States did exhibit the same desire to get round the problem of Article 2(7) by adopting in practice a compromise definition of intervention.

At the fourteenth session New Zealand continued upon the middle course she

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1. G.A., (XV), Sp.Pol.Com., Part.II, 242nd mtg., para. 13.

had pursued in the most recent debates on this subject and declared that while she would support an appeal to South Africa to review her racial policies she could not go further.<sup>1</sup> At the same session Belgium, the Netherlands, France, Finland and Italy all declared their support for general condemnations of racial discrimination but declined to support recommendations which dealt specifically with South Africa.<sup>2</sup> In the case of Belgium and France this represented a significant departure from previous sessions where they had adhered to the view that as the matter was domestic no United Nations action was possible.

At the fifteenth session, however, French opinion on the question of intervention seems to have undergone a transformation, and from this session onwards she supported mild appeals to the South African Government.<sup>3</sup> However, in doing so the French delegation stressed the need to observe the provisions to article 2(7).<sup>4</sup> In effect therefore, France appears to have come round to the view that where a matter is domestic or where the status of a matter is somewhat equivocal, appeals can be made to specific governments and need not be restricted to the generality of States.

A similar stand was taken by Canada.<sup>5</sup>

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1. G.A., (XIV), Sp.Pol.Com., 142nd mtg., paras. 1-5.
  2. *ibid*, 142nd mtg., paras. 23-24; *ibid*, 143rd mtg., paras. 26-30; *ibid*, 146th mtg., para. 10; *ibid*, 147th mtg., paras. 10-11; and *ibid*, paras. 19-20 resp.
  3. See G.A., (XV), Sp.Pol.Com., Part II, 244th mtg., paras. 16-18; *ibid*, 16th session, Sp.Pol.Com., 277th mtg., para. 8; See further, G.A., (XVII), Sp.Pol.Com., 337th mtg., para. 24.
  4. G.A., (XV), Sp.Pol.Com., 244th mtg., para. 16.
  5. G.A., (XV), Sp.Pol.Com., Part II, 243rd mtg., para. 2.



Even Australia ultimately abandoned her strict position on domestic jurisdiction and intervention. At the fourteenth session, the Australian delegate indicated that as he considered the matter to be within the domestic jurisdiction of South Africa he would oppose the draft resolution before the Committee. However, from the fifteenth session Australia altered her position somewhat. At the fifteenth session she noted that the weight of world opinion was against apartheid. However she also stressed that there were limitations on the powers of the United Nations on such matters and indicated that she would consider any proposals put before the Committee with these limitations in mind.<sup>1</sup> Ultimately, despite these limitations, Australia was able to support a resolution which was in effect an appeal to South Africa to reconsider her position, but declined to support one which would have authorised sanctions against her.<sup>2</sup>

##### 5. Conclusions.

As in the other cases so far examined, the practice in this case is varied and often difficult to assess from a legal point of view. However, it does appear that a considerable number of States were prepared in practice to accept a certain amount of United Nations action with respect to a matter the exact status of which was in doubt. However much they might espouse doctrinaire definitions of intervention, as a matter of principle, in practice they appear to do something else.

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1. G.A., (XV), Sp. Pol. Com., Part II, 241st mtg., paras. 25-26.

2. *ibid*, 244th mtg., paras. 3-5; and *ibid*, Plen., Part II, 931st mtg., paras. 113-116.

## Chapter V

### The Question of Cyprus.

The substantive debates on the Cyprus question are not particularly instructive for present purposes. In the agenda debates<sup>1</sup> the United Kingdom did contend that the United Nations was not competent to even discuss the domestic aspects of the matter, but in the later stages of the case history it becomes evident that she ceased to press her views on competence. While the United Kingdom took care to refute Greek charges and claims, she was only too eager to try to find a way out of the Cyprus impasse which would in some way be satisfactory to all the interests involved. The United Kingdom Government came to accept that, in the main, the problem of Cyprus was international. Therefore, the question of competence ceased to be important.

Such practice as there is concerning the question of competence is, however, in line with the general trend already established.

#### 1. The Eleventh Session.<sup>2</sup>

At this session, it will be remembered, the General Assembly had before it a dual item on this question. On the one hand, Greece asked that Cyprus be given self-determination. On the other the United Kingdom complained about Greek support for terrorist activities in Cyprus. Both these Governments presented draft resolutions to deal with their parts of the item. Neither, however, was pressed to a vote,<sup>3</sup> and in the end of the day a compromise

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1. See Vol. I, Chap. IV, p. 91.

2. The ninth and tenth sessions are not instructive for present purposes. The item was not included on the agenda for the tenth session. At the ninth session, few statements were made which give any light on the attitude of States towards the question of intervention.

3. G.A., (XI), 1st Com., 856th mtg., para. 32.

resolution, sponsored by India, was adopted.

In the course of the debate, very few States dealt with the question of competence and such statements as there were on the subject were all to the effect that the United Nations was not competent to deal with the Greek request that self-determination be granted to Cyprus. This was held, by the United Kingdom,<sup>1</sup> Turkey,<sup>2</sup> Australia,<sup>3</sup> New Zealand,<sup>4</sup> France,<sup>5</sup> Belgium,<sup>6</sup> and Portugal<sup>7</sup>, to be a matter within the domestic jurisdiction of the United Kingdom and therefore unfit for discussion in the United Nations.

These rigid attitudes were soon given up, however, by most of the States concerned. Australia, for example, later added that the General Assembly, pursuant to Article 35(1), should attempt to facilitate conciliation by expressing its hope and convictions that a solution in the spirit of Articles 1 and 2 would be found.<sup>8</sup>

The element of compromise was also seen in the statement of the Italian delegation. The Italian delegate said that he wished to associate himself with those delegations which did not believe that it was useful for the United Nations to be called upon to intervene in questions which, like that of Cyprus,

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1. G.A., (XI), 1st Com., 847th mtg., paras. 55-76.

2. *ibid*, 848th mtg., paras. 14-66, partic, para. 16.

3. *ibid*, 849th mtg., paras. 22-33.

4. *ibid*, 851st mtg., paras. 20-31, partic, para. 24.

5. *ibid*, 852nd mtg., paras. 30-31.

6. 853rd mtg., paras. 4-10.

7. *ibid*, paras. 53-54.

8. *ibid*, 853rd mtg., para. 52.

concerned the territory of a Member State and in addition some particular ethnic group. Article 2, paragraph 7, he said, ruled out intervention by the United Nations in matters which were essentially domestic. Nevertheless, while he held these views, he was of the opinion that the Indian draft resolution represented a useful contribution to the solution of the problem.<sup>1</sup>

The draft resolution which was sponsored by India and ultimately adopted by the Committee was as follows.<sup>2</sup>

The General Assembly,  
Having considered the question of Cyprus,  
Believing that the solution of this problem requires  
 an atmosphere of peace and freedom of expression,  
Expresses the earnest desire that a peaceful, democratic  
 and just solution will be found in accordance with the  
 purposes and principles of the Charter of the United Nations,  
 and the hope that negotiations will be resumed and continued  
 to this end.

This draft resolution was adopted<sup>3</sup> by the 1st Committee by 76 votes to 0, with 2 abstentions and it is noteworthy that the United Kingdom, Turkey and Portugal all voted for it. The United Kingdom and Turkey voted for it because they felt it was conducive to a solution of the problem.<sup>4</sup> Portugal felt that this resolution was not inconsistent with the principles she had stated earlier.<sup>5</sup>

The resolution was adopted by the Plenary session by 57 votes to 0, with

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1. *ibid*, 856th mtg., paras. 5-8.

2. *ibid*, Annexes, Vol. II, a.i.55, p. 18, Res. 1013(XI); submitted, 1st Com., 855th mtg., para. 36, Doc. A/C.1/L.172.

3. 1st Com., 856th mtg., para. 32.

4. *ibid*, para. 36 and 40-41 resp.

5. *ibid*, para. 48. There was no roll-call vote so no details are available of how the other Members voted.

1 abstention, that abstention not being the United Kingdom.<sup>1</sup>

The practice on the point is scanty, but none the less interesting. The resolution proposed by India confined itself to expressing the universal wish that a settlement be found. Nevertheless, no matter how mild the resolution, its passage is of legal interest for the passage of a resolution can only mean that for one reason or another, the General Assembly considers itself competent to adopt it. In this case the majority of States did not regard the matter as essentially domestic. But of those which did regard it as principally a domestic matter, few of them declined to vote for this resolution calling for the resumption of negotiations on the matter.

## 2. The Twelfth Session.

The significance of these votes in the eleventh session is brought into relief by the outcome of the voting on a resolution sponsored by Greece at the twelfth. At the twelfth session, the First Committee adopted the following resolution:<sup>2</sup>

The General Assembly,  
Having examined the question of Cyprus,  
Reaffirming its resolution 1015(XI) of 26 February 1957,  
Expressing its concern that more progress has not been  
 made towards the solution of this problem,  
Considering further that the situation in Cyprus is still  
 fraught with danger and that a solution at the earliest  
 possible time is required to preserve peace and stability  
 in that area,

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1. *ibid*, Plen. Vol. II, 660th mtg., para. 4. No details of voting were given, but the Repertory, Suppl. No. 2, Vol. I, p. 136, para. 30, states that the United Kingdom supported the resolution.
  2. G.A., (XII), 1st Com., 934th mtg., para. 35. For the text see, *ibid*, Annexes, a.i.58, p.9, Doc. A/3794, para. 12. For the original text proposed by Greece, see *ibid*, para. 5; for amendments submitted jointly by Canada, Chile, Denmark, and Norway see *ibid*, para. 6; for Spanish amendments, see *ibid*, para. 8; and Greek amendments *ibid*, para. 7.

Expresses its earnest hope that further negotiations and discussions will be undertaken in a spirit of co-operation with a view to having the right of self-determination applied in the case of the people of Cyprus.

However, this resolution failed to receive a two-thirds majority in the General Assembly and was therefore rejected.<sup>1</sup>

It is noticeable that delegations which in the previous session regarded the question of self determination as within the domestic jurisdiction of the United Kingdom but had nevertheless been prepared to vote in favour of a mild recommendation on the general Cyprus question, in this session opposed specific mention of the question of self determination in a resolution.<sup>2</sup> It is equally noticeable that a country like Portugal which also maintained that the Cyprus question was within the domestic jurisdiction of the United Kingdom and which voted against the draft resolution<sup>3</sup> would still have been prepared to vote in favour of a resolution similar to the one adopted at the previous session.<sup>4</sup>

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1. G.A., (XII), Plen., 731st mtg., para. 138.

2. See the statements of Belgium, *ibid*, 1st Com., 930th mtg., paras. 51-52; France, *ibid*, paras. 33-39; and Australia, *ibid*, 931st mtg., paras. 19-28.

3. G.A., (XII), Plen., 731st mtg., para. 138.

4. *ibid*, 1st Com., 931st mtg., para. 62. In the plenary session the details of voting were as follows:

In favour: Bolivia, Bulgaria, Byelorussian S.S.R., Costa Rica, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, Indonesia, Ireland, Lebanon, Panama, Poland, Romania, Saudi-Arabia, Sudan, Syria, Tunisia, Ukrainian S.S.R., U.S.S.R., Uruguay, Yemen, Yugoslavia, Albania.

Against: Australia, Belgium, Canada, Chile, Colombia, Denmark, Dominican Republic, France, Iran, Italy, Luxembourg, Netherland, New Zealand, Nicaragua, Norway, Pakistan, Portugal, Spain, Sweden, Turkey, Union of South Africa, U.K., Argentina.

Abstaining: Austria, Brazil, Burma, Cambodia, Ceylon, China, Finland, Honduras, India, Iraq, Israel, Japan, Laos, Liberia, Malaya, Mexico, Nepal, Paraguay, Peru, Philippines, Thailand, U.S.A., Venezuela, Afghanistan.

5. The Thirteenth Session.

At this session, the question of competence had almost completely ceased to have any importance, it not being pressed by the United Kingdom.<sup>1</sup>

During the debates in the First Committee numerous draft resolutions were presented.<sup>2</sup> None however received a two-thirds majority and so were not voted on in the General Assembly. The General Assembly confined itself to expressing its confidence that the parties would continue to seek a solution in accordance with the principles of the Charter. The resolution embodying this hope was adopted without formal vote.<sup>3</sup>

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1. See the statements of Australia, G.A.,(XIII), 1st Com., 1000th mtg., paras. 19-21, and South Africa, *ibid*, 1010th mtg., para. 44.

2. For a list of them see G.A.,(XIII), Annexes, a.i.68, p. 15, et seq. Doc.A/4029 and Add. 1.

3. G.A.,(XIII), Plen. 782nd mtg., para. 64. This question was not considered at the 14th session of the General Assembly and Cyprus was admitted to the United Nations in the 15th session.

## Chapter VI

### The Question of Algeria

The tendency to adopt a modified approach to the definition of intervention vis à vis the United Nations is very marked in this case. From these debates it appears that practically nobody considers a call to a State to negotiate on its differences - internal or otherwise - as intervention in its domestic affairs - a conclusion reminiscent of the earlier stages of the Indians in South Africa case.

#### 1. The Eleventh Session.

The attitude of States towards the question of intervention is well demonstrated by their views on the three draft resolutions which were presented to the First Committee.

#### (a) The Eighteen-Power Draft Resolution.

The text of this resolution was as follows:<sup>1</sup>

The General Assembly,

Having regard to the situation of unrest and strife in Algeria which is causing much human suffering and disturbing the harmony between nations,

Recognizing the right of the people of Algeria to self-determination according to the principles of the Charter of the United Nations,

1. Requests France to respond to the desire of the people of Algeria to exercise their fundamental right of self-determination;
2. Invites France and the people of Algeria to enter into immediate negotiations with a view to the cessation of hostilities and the peaceful settlement of their differences in accordance with the Charter of the United Nations;
3. Requests the Secretary-General to assist the parties in conducting such negotiations and report to the General Assembly at its twelfth session.

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1. G.A., (XI), Annexes, Vol. II, a.i.62, p. 2, Doc. A/C.1/L.165. The resolution was sponsored by the following Members: Afghanistan, Burma, Ceylon, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Lybia, Morocco, Nepal, Pakistan, Saudi-Arabia, Sudan, Syria, Tunisia, and Yemen.



(b) The Six-Power Draft Resolution.

The text of this resolution was as follows:<sup>1</sup>

The General Assembly,  
Having heard the statements of France and other delegations and discussed the question of Algeria.  
Expresses the hope that a peaceful and democratic solution of this question will be found.

(c) The Three-Power Draft Resolution.

The text of this resolution was as follows:<sup>2</sup>

The General Assembly,  
Having regard to the situation of unrest in Algeria which is causing much human suffering and loss of lives.,  
Believing that the unsatisfactory situation now prevailing in Algeria may be normalized by the joint efforts of France and the Algerian people to find an equitable solution in conformity with the principles of the Charter of the United Nations,  
Expresses the hope that France and the Algerian people will endeavour, through appropriate negotiations, to bring about the end of the bloodshed and the peaceful settlement of the present difficulties.

(d) The Attitude of States - The First Committee.

With the exception of France, all States which were concerned to avoid any hint of intervention in the domestic affairs of France, were prepared to vote in favour of at least one of these resolutions.

(1) France.

The French representative, M. Pineau, said that France had never admitted and never would admit any competence on the part of the United Nations in a problem which she regarded as within her domestic affairs. Nevertheless she had not objected, he said, to the inclusion of the item on the agenda partly because the General Assembly could, in many cases, discuss a matter without

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1. G.A., (XI), Annexes, Vol. II, a.i.62, p. 3, Doc.A/C.1/L.167. It was sponsored by: Argentina, Brazil, Cuba, Dominican Republic, Italy, and Peru.

2. G.A., (XI), Annexes, Vol. II, a.i.62, p. 3, Doc. A/C.1/L.166. It was sponsored by Japan, Philippines and Thailand.

thereby acquiring the right to adopt recommendations thereon. France had not objected to the inclusion of this item also in order that she might have an opportunity of putting her side of the case and to draw attention to the amount of foreign interference which was taking place in Algeria. This attitude of not opposing the inclusion of the item on the agenda was quite consistent, M. Pineau said, with France's challenge, under Article 2(7), of the competence of the General Assembly. In making this claim he recalled an earlier statement by the representative of Thailand that the General Assembly should study the question of Algeria without making any recommendations that might constitute intervention in the domestic affairs of France.

In keeping with this position, M. Pineau added that France could not accept any recommendation concerning the Algerian problem.<sup>1</sup>

(ii) The United Kingdom

In this case, the United Kingdom adopted a curious attitude to the question of competence. She maintained, on the one hand, that the United Nations was not even competent to discuss the matter. Thus she opposed the eighteen-power and three-power draft resolutions as intervention in the domestic affairs of France.<sup>2</sup> On the other, she was able to support the six-power draft resolution.<sup>3</sup> The United Kingdom representative explained that he was able to do this as this resolution expressed sentiments which were strongly shared by his Government. Moreover, he claimed, the resolution involved no recommendation by the General Assembly. He then added, for good measure, that his vote in favour of this resolution did not prejudice his opinion that the General Assembly

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1. G.A., (XI), 1st Com., 830th mtg., paras. 1-11.

2. *ibid.*, 834th mtg., paras. 1-4; *ibid.*, 846th mtg., paras. 63-64.

3. *ibid.*

was not, in any case, competent to even discuss the matter.

(iii) The United States.

The American representative said that he welcomed the French decision not to oppose discussion of the matter in the General Assembly. He added however, that he would oppose any resolution which amounted to intervention in France's domestic affairs.<sup>1</sup> After the three draft resolutions had been presented to the Committee he indicated that for that reason he would oppose the eighteen and three-power drafts, but not the six-power one.

(iv) Cuba.

In the opinion of the Cuban delegation the matter was within France's domestic jurisdiction. However, she did not on that account believe that the United Nations was totally incompetent.

Cuba, her representative said, believed that any United Nations intervention would establish a dangerous precedent. Article 2(7) was, in her opinion, emphatic. Therefore, the United Nations was precluded from suggesting to France a line of conduct similar to that proposed by the Syrian delegate who had given a rough outline of a suitable Algerian constitution.

Cuba had not opposed the inclusion of the item on the agenda despite the fact that it did not feel that the Assembly was competent to deal with the substance of the question. It had done so as it felt that a debate would be valuable and would assist France to find a solution to the problem.

The Cuban delegate added that from a procedural point of view it would be better not to adopt any resolution at all. But if the Committee wanted to follow established practice, he said, it could adopt a text. The Cuban delegation felt that such a text should express the hope of all delegations

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1. *ibid.* 835th mtg., para. 52-57; *ibid.* 844th mtg., paras. 41-42.

that the Algerian question might be settled by peaceful and democratic means.<sup>1</sup>

Later in the debate, Cuba indicated that she opposed both the eighteen and the three-power drafts as both violated Article 2(7). The eighteen-power draft attempted, the Cuban delegate said, to set at naught the provisions of Article 2(7). The three-power draft, while it did not so manifestly flout the Charter, nevertheless prejudiced the Assembly's competence.

The Cuban delegate said, however, that he was anxious to make a constructive contribution to the debate and to that end had been one of the sponsors of the six-power draft. By adopting that text, he said, the General Assembly would be laying down a specific instruction with which France would be obliged to comply.<sup>2</sup>

(v) Chile

The representative of Chile recalled that the United Nations was forbidden to intervene in domestic affairs. He added that the principle of self-determination ought to be subject to the principle of non-intervention.

Chile objected to the terms of the eighteen-power draft resolution because, in her opinion, it took no account of the principle of sovereignty.<sup>3</sup> She also voted against the three-power draft resolution.<sup>4</sup> However, her views on the competence of the General Assembly did not prevent her from voting in favour of the six-power draft resolution.<sup>5</sup>

(vi) New Zealand

New Zealand, Sir Leslie Munro said, still had doubts on the competence

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1. *ibid.* 836th mtg., paras. 29-38.

2. *ibid.* 844th mtg., para. 25; See also *ibid.* 846th mtg., paras. 73-75.

3. *ibid.* 841st mtg., paras. 10-16.

4. 846th mtg., para. 62.

5. *ibid.* para. 52.

of the General Assembly to deal with the matter, but welcomed France's action in explaining her position to the Committee. He said that his country opposed the eighteen-power draft resolution as it was an example of intervention in the domestic affairs of France. It sought to interpose the authority of the United Nations between France and the inhabitants of a French territory.<sup>1</sup> While however, New Zealand objected to this resolution and also voted against the three-power draft<sup>2</sup>, she voted in favour of the six-power resolution.<sup>3</sup>

(vii) Israel.

Israel maintained that the matter was within the domestic jurisdiction of France. However, she also recognized that there were present various competing interests. To reconcile these she said that it might be well to follow the middle position she herself had suggested at an earlier session<sup>4</sup> of making a distinction between the discussion of a question and the adoption of recommendations or measures which would constitute an intervention inconsistent with the principle of national sovereignty.<sup>5</sup>

In the execution of her middle course Israel voted against the second paragraph of the preamble and operative paragraph one of the eighteen-power draft<sup>6</sup> and against the three-power resolution.<sup>7</sup> However, she voted in favour of the six-power draft resolution.<sup>8</sup>

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1. *ibid*, 841st mtg., paras. 25-30.

2. *ibid*, 846th mtg., para. 62.

3. *ibid*, para. 52.

4. G.A. (VIII), Plen., 449th mtg., para. 20.

5. G.A. (XI), 1st Com., 841st mtg., paras. 43-54.

6. *ibid*, 846th mtg., paras. 13-14.

7. *ibid*, para. 62.

8. *ibid*, para. 52.

(viii) Sweden.

Sweden noted that Algeria was part of metropolitan France and that the problem was therefore domestic. However that fact did not deprive, in her opinion, the General Assembly of the power to discuss it. The General Assembly, the Swedish representative said, had power to discuss and made recommendations on human rights and fundamental freedoms.

Sweden indicated that she objected to the eighteen-power draft - but more on political grounds than on legal.<sup>1</sup> She abstained on the three-power draft but voted in favour of the six-power one.<sup>2</sup>

(ix) Colombia

The Colombian delegate stressed the importance of Article 2(7) in the structure of the United Nations. This Article was, he said, a fundamental point in the present debate. He recalled that the Latin-American States generally had been very interested in that provision at the United Nations Conference on International Organization at San Francisco in 1945. He maintained that if the principle of non-intervention had not been included in the Charter many Latin American countries, not to mention others, would not have been represented in the United Nations. The inclusion of that principle had been, he said, essential for its signature and ratification and must be respected. He maintained that in virtue of this principle domestic matters could not be discussed in the General Assembly. Article 2(7) was, in his opinion, the cardinal principle and took precedence over the others in the Charter, in particular the right of self-determination.<sup>3</sup>

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1. *ibid.* 842nd mtg., paras. 51-57.

2. *ibid.* 846th mtg., paras. 62 and 52 resp.

3. *ibid.* 845rd mtg., paras. 1-13.

However, while she held such strong views on the effect of Article 2(7), she was still able to vote in favour of the six-power draft.<sup>1</sup>

(x) Australia

The position adopted by Australia was similar to that of Colombia. She too stressed the overriding effect of Article 2(7). Sir Percy Spender added that the Charter was an international contract the import of which could only be altered by international agreements.<sup>2</sup>

In keeping with these opinions Australia objected to both the eighteen and the three-power draft resolutions. Of the three-power draft, Sir Percy said that although its sponsors had been guided by very proper motives, their draft assumed the competence of the United Nations and the existence of an entity separate from France, namely the Algerian people. These implications were, he maintained, inconsistent with the constitutional position of Algeria.

However, he claimed that the six-power draft was not inconsistent with the attitude adopted by Australia, and that he would support it.<sup>3</sup>

(xi) The Netherlands

The Dutch representative opposed both the eighteen and the three-power drafts because of the unacceptable interpretation of the competence of the United Nations to which they were conducive. However, like other States in this position, she did not object to the six-power draft. It was not open, he said, to the same objections on the grounds of competence since it did no more than express the hope that the French Government would be successful in carrying

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1. *ibid.*, 846th mtg., para. 52.

2. *ibid.*, 844th mtg., paras. 8-15.

3. *ibid.*

through its plans.<sup>1</sup>

(xii) The Dominican Republic.

The Dominican representative said that his delegation considered that the United Nations should not treat the Algerian question as one on which it was competent to suggest a solution because in the case of Algeria such an action would not be in keeping with the mission of the United Nations in the matter of peaceful solutions. There were, he continued, two opinions on the question of competence: that of relative competence or the right of limited intervention, and that of complete incompetence. In his opinion, a solution should be sought on the basis of programmes of gradual and progressive action.

For these reasons, the Dominican representative said that he would support the six-power draft as the only prudent one.<sup>2</sup>

(xiii) Argentina.

The Argentinian delegate said that he would vote for the six-power draft resolution of which his delegation was a co-sponsor. He added that in his opinion, the Algerian question was within the domestic jurisdiction of France and that the United Nations could not 'deal with' such matters without prejudicing the specific provisions of the Charter and establishing a precedent dangerous to the peace of independent Member States. The French Government, he said, had declared its intention of seeking, without delay, a peaceful and democratic settlement by means of free and supervised elections. All knew that there had never been any reason to doubt France's word. His delegation believed

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1. *ibid*, paras. 26-29.

2. *ibid*, 845th mtg., paras. 17-18.



that the aspirations of the Algerian people would be taken into account and that its wishes would be met.<sup>1</sup>

(xiv) Thailand

The Thai representative did not make it clear whether or not, in his opinion, the matter was domestic. However, it seems to be suggested that even if it were domestic, it would still be within the power of the General Assembly to adopt some kind of recommendation thereon. Speaking of the three-power draft of which Thailand was a co-sponsor, the Thai representative made reference to the objections of the Australian delegation. The first objection to the three-power draft was, he recalled, that it assumed the competence of the First Committee and of the General Assembly to discuss the Algerian question. This he denied. He claimed that it in no way assumed such competence. He then added that in any case France had not opposed such discussion.

Speaking of the substance of the three-power draft, he said that he could not conceive of their being any objection to the specific mention of the principles of the Charter in the draft, since all Members of the Committee were signatories of the Charter and respected its provisions. In conclusion he added that if the draft of which he was a co-sponsor in any way constituted an interference or an intervention in the domestic affairs of France, it would be the duty of every member to oppose it. However he was convinced that it did not violate the provisions of Article 2(7).<sup>2</sup>

(xv) and (xvi) Belgium and Spain

These two States both indicated that they would oppose the eighteen and the three-power drafts because of doubts about the competence of the General Assembly to adopt them. Both however announced their support for the six-power

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1. *ibid*, para. 57.

2. *ibid*, 846th mtg., paras. 1-5.

draft.<sup>1</sup>

(xvii) Portugal.

In explaining his votes on the three drafts submitted to the First Committee the Portuguese delegate said that he had refrained from participating in the debate since he had found it impossible to disregard a fundamental principle of the Charter in which his country strongly believed and which it desired to obey. As a consequence he said that he had been unable to support either the eighteen or the three-power drafts. However, he had been able to support the six-power draft - a draft which confined itself to taking note of the discussion which had taken place in the Committee and which had not been, he claimed, opposed by the French delegation - an incorrect statement since France had stated that she would oppose any resolution on the subject and in fact took no part in the voting at all.<sup>2</sup>

(e) Voting on these draft resolutions.

The eighteen-power draft resolution was not accepted by the Committee.<sup>3</sup>  
The six-power draft was accepted by 41 votes to 33, with 3 abstentions.<sup>4</sup> The

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1. *ibid*, paras. 6 and 7-8 resp.

2. *ibid*, paras. 65-66.

3. *ibid*, paras. 10-18.

4. *ibid*, para. 52. The details were as follows:

In favour: Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, Guatemala, Haiti, Honduras, Iceland, Israel, Ireland, Italy, Laos, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Spain, Sweden, U.K., U.S.A., Uruguay, Venezuela, Argentina, Australia, Belgium, Brazil, Canada, Chile, China.

Against: Czechoslovakia, Egypt, Ethiopia, Greece, India, Indonesia, Iran, Iraq, Japan, Jordan, Lebanon, Lybia, Morocco, Nepal, Pakistan, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Syria, Thailand, Tunisia, Ukrainian S.S.R., U.S.S.R., Yemen, Yugoslavia, Afghanistan, Albania, Bulgaria, Burma, Byelorussian S.S.R., Ceylon.

Abstentions: Turkey, Bolivia, Cambodia.

three-power draft was adopted by 37 votes to 27 with 13 abstentions.<sup>1</sup>

(f) The Plenary Session.

Neither of the two drafts adopted at the meeting of the First Committee received a two thirds majority and so were not considered by the General Assembly. At its plenary session, nine delegations - those of Argentina, Brazil, Cuba, Dominican Republic, Italy, Japan, Peru, Philippines and Thailand - combined to sponsor the following resolution which was adopted unanimously:<sup>2</sup>

The General Assembly,  
Having heard the statements made by the various delegations  
 and discussed the question of Algeria,  
Having regard to the situation in Algeria which is causing  
 much suffering and loss of human lives,  
Expresses the hope that, in a spirit of cooperation, a  
 peaceful, democratic and just solution will be found, through  
 appropriate means, in conformity with the principles of the  
 Charter of the United Nations.

Explaining why his delegation had voted in favour of this resolution the Portuguese delegate said that this resolution did not prejudice his position on the question of competence since it merely represented an expression of the hope and wish that existed in the hearts of all peace-loving governments and

1. ibid, para 62. The details of voting were as follows:

In favour: Bulgaria, Burma, Byelorussian S.S.R., Cambodia, Ceylon, Czechoslovakia, Egypt, Ethiopia, Greece, India, Indonesia, Iran, Iraq, Japan, Jordan, Lebanon, Liberia, Lybia, Morocco, Nepal, Pakistan, Philippines, Poland, Romania, Saudi-Arabia, Sudan, Syria, Thailand, Tunisia, Turkey, Ukrainian S.S.R., U.S.S.R., Yemen, Yugoslavia, Afghanistan, Albania, Bolivia,  
Against: Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, Israel, Italy, Laos, Luxembourg, Netherlands, New Zealand, Nicaragua, Panama, Paraguay, Portugal, U.K., U.S.A., Uruguay, Venezuela, Argentina, Australia, Belgium, Brazil.  
Abstaining: China, Denmark, El Salvador, Finland, Guatemala, Iceland, Ireland, Mexico, Norway, Peru, Spain, Sweden, Austria.

2. G.A., (XI), Plen., Vol. II, 654th mtg., para. 2; Res. 1012 (XI).

peoples.<sup>1</sup> The Colombian delegate expressed similar views.<sup>2</sup> Explaining the views of the United Kingdom, the British delegate said:<sup>3</sup>

As the Assembly is aware, my delegation does not admit the competence of the United Nations to discuss the question of Algeria. Nevertheless, in the First Committee, while reserving our position on competence, we voted in favour of the six-power draft resolution, which contained no recommendation on the matter, but simply expressed the hope for a peaceful and democratic solution. Since the new compromise draft resolution presented this morning contained some elements which were not present in the six-power draft resolution, my delegation felt unable to vote for it without very careful consideration. However, after reflection, it seemed to us that we could do so. The resolution, in fact derogates in no way from the sovereign rights of France in respect of Algeria; it expressed the hope, which my Government shares to the full, that the efforts of France to achieve a settlement will be successful.....

The representative of Belgium made similar remarks.<sup>4</sup>

(g) Conclusions:

The overwhelming conclusion to be drawn from this debate is that States do not consider a resolution of the General Assembly which expresses the hope that another Member of the United Nations will find a solution to its internal troubles, as intervention in the domestic affairs of that State. Of the States which were concerned to avoid any hint of intervention in the domestic affairs of France in this case, 15 in the First Committee voted in favour of the six-power draft and only 1 against. In the plenary session a similar resolution was adopted unanimously. However, it appears that a resolution which goes even the slightest bit further will be viewed with some suspicion.

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1. *ibid*, para. 81.

2. *ibid*, 655th mtg., paras. 29-30.

3. *ibid*, paras. 24.

4. *ibid*, 654th mtg., para. 108.

The grounds which these States gave for holding that such a resolution was permissible are themselves of interest. Some, e.g., Argentina, Australia, Belgium, Colombia, Cuba, the Netherlands, Portugal and the United Kingdom voted for Resolution 1012(XI) because in their opinion it did not prejudice the question of the competence of the United Nations to deal with the substance of the matter. As it merely expressed the hope that a solution would be found to the problem, they were not prepared to take exception to it. Of this group, two - the United Kingdom and Belgium - were more explicit. They voted for this resolution because, they said, it contained no recommendation.

It is not true that the adoption of a substantive resolution on a particular subject by the General Assembly or any other organ of the United Nations does not prejudice the competence of the United Nations to deal with the matter. Such a contention is plainly erroneous. The United Nations is either competent to deal with a certain item or it is not. It either has certain powers or it lacks them. A legal personality cannot exercise powers which it does not possess. It cannot operate in a legal vacuum. The General Assembly can only adopt resolution on subjects with which it is competent to deal. If it is not competent to deal with the substance of a certain matter, then it can neither discuss it nor adopt any kind of resolution thereon, no matter how mild. This is one of the consequences of the nature of a legal personality. It does not possess the full plenum of State powers, but only those which have been conferred on it. If it has the power to do a certain thing, then it is competent. If it has not this power, it is incompetent. There can be no tertium quid.

Doubtless, of course, what nations which made these assertions really wanted to say was that the resolution in question did not amount to intervention in the domestic affairs of France. But they did not say this and the reason

they did not is perhaps not too hard to find. To admit formally that the United Nations was competent to adopt this kind of resolution would entail an admission that the United Nations has a certain degree of competence over domestic affairs. It would entail admitting that mere discussion of domestic affairs was not intervention. It would admit that the General Assembly has a certain power of recommendation in relation to domestic affairs. This these States have been unwilling formally to do. However, it should be stressed that in fact this is what they have done in practice. One cannot maintain that a legal personality has no power to deal with the substance of a particular matter and then support action thereon by that body. Action by the General Assembly is either legal or ultra vires. There is nothing in between. It is a perfectly correct line of argument to say that a certain kind of action is legal because it does not amount to intervention in the domestic affairs of a State. The General Assembly is only prohibited from intervening not from dealing with altogether. But it is incorrect to maintain that a certain action is legal because it does not raise the question of the competence of the General Assembly to take it. Such an argument does not bear examination.

The additional assertion of the United Kingdom and Belgium that they voted for Resolution 1012(XI) because it involved no recommendation can only be termed ridiculous. The General Assembly has two blanket powers. It can discuss and it can make recommendations - no more and no less. It is not given power to adopt something called a 'resolution' which has an effect less than a recommendation. The word 'resolution' in fact nowhere appears in the Charter. Whatever it is called, what was adopted by the General Assembly at the eleventh session in connection with the Algerian question was, technically, a recommendation and had the legal attributes of a recommendation. It is true that this recommendation gave no executive directions to any body that certain things should be done.

However, this is something quite different from maintaining that Resolution 1012(XI) was legal because it involved no recommendation. The absence of the word 'recommend' in that resolution is, for this purpose, of no importance. It can be argued that a recommendation of this type, which does not give any executive directions to anybody does not constitute intervention in the domestic affairs of a particular State. This is a valid and useful line of argument. But it is useless to say that a certain course of action is legal because it is not a recommendation. The General Assembly can only recommend.<sup>1</sup>

## 2. The Twelfth Session

Exactly the same picture is presented by the debates in the twelfth session. At this session, the General Assembly expressed the wish that talks be entered into in order that a solution might be found. Again the general trend of the debates was to accept some recommendations or parts thereof, but to object to others as they were felt to go too far and to verge on intervention.

### (a) The Seventeen-Power Draft Resolution

The First Committee had before it the following draft resolution submitted by 17 nations:<sup>2</sup>

The General Assembly,  
Having discussed the Algerian question,  
Recalling its resolution 1012(XI) of 15 February 1957,  
Regretting that the hope expressed in that resolution has not yet been realized,  
Recognizing that the principle of self-determination is applicable to the Algerian people,  
Noting that the situation in Algeria continues to cause much suffering and loss of human life,  
Calls for negotiations for the purpose of arriving at a solution in accordance with the principles and purposes of the Charter of the United Nations.

1. See the statement of the Egyptian delegate, G.A., (XI), Plen., 655th mtg., para. 40.

2. G.A., (XII), Annexes, a.i.59, p.2, Doc.A/3772, para. 4. It was sponsored by Afghanistan, Burma, Ceylon, Egypt, Ghana, Indonesia, Iraq, Jordan, Lebanon, Lybia, Morocco, Nepal, Saudi-Arabia, Sudan, Syria, Tunisia, Yemen.

(b) Amendments proposed thereto.

To the above draft resolution, the delegates of Ireland, Canada and Norway jointly proposed the following amendments:<sup>1</sup>

1. The fourth preambular paragraph of the 17 power draft would be replaced by the following:

"Recognizing that the people of Algeria are entitled to work out their own future in a democratic way."

2. The operative paragraph would be replaced by the following:

"Proposes effective discussion for the purpose both of resolving the present troubled situation and of reaching a solution in accordance with the purposes and principles of the Charter of the United Nations."

(c) The Seven-Power Draft Resolution.

The First Committee also had before it a draft resolution sponsored by the delegations of Argentina, Brazil, Cuba, Dominican Republic, Italy, Peru, and Spain. The text was as follows:<sup>2</sup>

The General Assembly,

Having heard the statements made by the various delegations and having discussed the question of Algeria,

Bearing in mind the situation in Algeria, which continues to cause much suffering and loss of human lives,

1. Takes note of the attempts which have been reported to the Assembly to settle the problem both through the good offices of Heads of State and by French legislative measures;

2. Expresses the hope once again that, in a spirit of co-operation, a peaceful, democratic and just solution will be found through appropriate means, in conformity with the principles of the Charter of the United Nations.

(d) The Attitude of States - The First Committee.(1) Belgium

At the beginning of the debate the Belgian delegate indicated that where a

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1. For text, see *ibid.* p.5, Doc.A/3772, para. 6.

2. G.A., (XII), Annexes, a.i.,59, p.2, Doc.A/3772, para. 5.



matter was within the domestic jurisdiction of a particular State the United Nations was incompetent to act.<sup>1</sup> However, later on he indicated that he would vote in favour of the three-power amendments to the seventeen-power draft resolution. He particularly favoured the incorporation of a reference to the purposes and principles of the United Nations into the resolution as this, he said, implied that the provisions of Article 2(7) would be observed in all circumstances.<sup>2</sup>

(ii) The United Kingdom.

The British delegate said that his participation in the debate should not be taken as prejudicing his country's views on domestic jurisdiction.<sup>3</sup> However, whatever he meant by that, when it came to the voting stage he voted in favour of the three-power amendments to the seventeen-power draft and for the seventeen power draft as amended.<sup>4</sup>

(iii) Italy.

The Italian delegate said that in his delegation's view France was empowered to consider the question as within her domestic jurisdiction.<sup>5</sup> However, he did not conclude as a result that the General Assembly was totally incompetent. Rather he supported the compromise view of intervention, for Italy was one of the co-sponsors of the seven-power draft and in addition voted in favour of the three power amendments to the seventeen-power draft resolution, and the seventeen

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1. G.A., (XII), 1st Com., 914th mtg., paras. 35-41.

2. *ibid*, 926th mtg., para. 60.

3. *ibid*, 915th mtg., para. 55.

4. *ibid*, 926th mtg., paras. 71 and 72.

5. *ibid*, 916th mtg., paras. 16-17.

power draft as amended.<sup>1</sup>

(iv) Cuba.

Like Italy, Cuba maintained that the matter was domestic and that the United Nations could not intervene. The United Nations, the Cuban delegate maintained, could not issue directives to France on how to settle the Algerian problem.<sup>2</sup> This however, did not prevent her from co-sponsoring the seven-power draft resolution. This resolution, the Cuban delegate said, was substantially the same as resolution 1012(XI), which had been adopted unanimously at the eleventh session. He maintained that the Assembly could not now do more than reaffirm this resolution.<sup>3</sup>

(v) Peru.

The Peruvian delegate said that the role of the United Nations was necessarily limited. It was limited, in the first place, by the legal prohibitions of the Charter, which were, he asserted, not mere technicalities. These prohibitions were rather standards of conduct, standards of law and prudence. The United Nations, he reminded the Members, could not legally revise the constitutional structure of France. France, like all other States which had signed the Charter, could not countenance any interference in its internal structure and the Organization had neither the right nor the authority to do so. Yet it had been claimed, he said, that the Algerian issue could only be settled by such constitutional reform. That he admitted, might well have been the case, but such reform would have to be the unilateral and individual act of France. The United Nations could not, in a recommendation, implicitly or

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1. *ibid*, 926th mtg., para. 71 and 72.

2. *ibid*, 920th mtg., paras. 1-4.

3. *ibid*, 925th mtg., para. 5-7.

explicitly advise or recognize changes in the constitutional structure of France.<sup>1</sup>

These views however did not prevent Peru from co-sponsoring the seven-power draft, or from voting in favour of the three-power amendments to the seventeen-power draft or the seventeen-power draft itself as amended.<sup>2</sup> Speaking of the seven-power draft, the Peruvian delegate claimed that it did not prejudice the juridical questions involved.<sup>3</sup> Moreover, he asserted that the United Nations could properly concern itself with the bloodshed in Algeria even though it was recognized that there had to be a voluntary and spontaneous acceptance of a cease-fire by both sides.<sup>4</sup>

(vi) Argentina.

In the opinion of Argentina, the matter was domestic and outside the competence of the United Nations.<sup>5</sup> However, despite this opinion, the Argentinian delegation joined with the six others concerned in sponsoring the joint seven-power draft resolution. Speaking of this draft he reminded the Members that the Assembly was not a super-state and could not pass judgement on French legislation. In adopting the seven-power draft resolution, however, the General Assembly would simply be taking note of the passing of an Act. It would be simply recording a fact and noting French attempts to find a peaceful solution for the problem. It would also take note of the offer of good offices and in that way pay tribute to two Heads of State whose high motives were, he said,

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1. *ibid*, 920th mtg., para. 14.

2. *ibid*, 926th mtg., paras. 71 and 72.

3. *ibid*, 924th mtg., paras. 47-51.

4. *ibid*, 920th mtg., para. 15.

5. *ibid*, 921st mtg., paras. 21-51.

appreciated by all Members of the Committee.<sup>1</sup>

Argentina also supported the three-power amendments and the seventeen-power draft as amended.<sup>2</sup>

(vii) Israel.

The Algerian problem, the Israeli delegate said, had come before the General Assembly at a particular political and international level which made it distinct from all other questions hitherto discussed by the Assembly. Algeria lay within a territorial framework and a human setting over which there extended the exclusive sovereignty of the French State. For more than a century, he reminded the Members, Algerian territory had been legally part of French territory. However, despite these facts, certain powers were again asking the United Nations to take up a position in favour of the detachment of that territory. The Members of the Assembly were being asked to reduce the sphere of French sovereignty by outside action. This, he maintained, they could not do. The United Nations was precluded from moving towards a settlement of the Algerian problem which did not embody full respect for the French constitution.

It was true, he continued, that the evolution of the Assembly had gradually led its Members to give a broader interpretation to Article 2(7). Nevertheless a rigorous distinction was still required between the discussion of a problem by the United Nations and United Nations intervention within the sphere of national sovereignty. It was only by drawing this distinction that the present debate became compatible with the provisions of the Charter.

The Israeli delegate maintained that despite the restrictions on its powers, the Assembly was nevertheless competent to express the heartfelt wish that

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1. *ibid*, 924th mtg., paras. 52-53.

2. *ibid*, 926th mtg., paras. 71 and 72.

concord might be restored in a peaceful, democratic and just manner. Diplomatic channels remained open to the States most directly concerned and whose action would be more effective if it were not attended by the publicity of United Nations debates. The United Nations could not, however, decide on any measure which would mean any sort of intervention in French affairs, for France would be entitled to invoke the Charter against any initiative of that kind.<sup>1</sup>

Israel voted for the three-power amendments to the seventeen-power draft and for the seventeen-power draft as amended.<sup>2</sup>

(viii) Portugal.

Portugal maintained that the matter was domestic and that Article 2(7) was therefore applicable. She indicated however that while she would not discuss the substance of the problem she would support a resolution similar to Resolution 1012(XI)<sup>3</sup> and in fact did vote for the three-power amendments to the seventeen-power draft and that draft resolution as amended.<sup>4</sup>

(ix) The Netherlands.

The Dutch delegate stated that the General Assembly was not competent to make any recommendations to France regarding the manner in which it should settle the Algerian problem because under the terms of the Charter the question fell within French domestic jurisdiction. In these circumstances, he continued, the Dutch delegation would only be able to vote in favour of a draft resolution which would not impede the French Government in the performance of its task and

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1. *ibid.*, 921st mtg., paras. 64-68.

2. 926th mtg., paras. 71 and 72.

3. *ibid.*, 922nd mtg., paras. 46-51.

4. *ibid.*, 926th mtg., paras. 71 and 72.

which would be compatible with the principles laid down in Article 2(7).<sup>1</sup>

Under these circumstances, the Netherlands opposed the seventeen-power draft resolution as it originally stood,<sup>2</sup> but voted in favour of the amendments thereto proposed by Ireland, Canada and Norway and for the draft resolution as amended.<sup>3</sup>

(x) Australia.

The Australian delegate said that he had not taken part in the debate because he was convinced that the item fell within French domestic jurisdiction. It seems to be implied from this that where this is the case Australia considered even discussion to be ultra vires. Nevertheless, she was able to vote in favour of the draft seventeen-power resolution as amended, her objections being confined to the original form thereof.<sup>4</sup>

(xi) Colombia.

Colombia also indicated her doubts on competence, but said she would vote for a mild resolution.<sup>5</sup> In fact she too voted in favour of the seventeen-power draft resolution as amended.<sup>6</sup>

(e) Voting on the above proposals

The three-power amendments to the seventeen-power draft resolution were carried by 37 votes to 36 with 7 abstentions.<sup>7</sup> The whole draft seventeen-power

1. *ibid*, 924th mtg., paras. 5-5.

2. *ibid*.

3. *ibid*, 926th mtg., paras. 71 and 72.

4. see *ibid*, 924th mtg., paras. 15-18; and 926th mtg., paras. 71 and 72.

5. *ibid*, paras. 16-30.

6. *ibid*, para. 72.

7. *ibid*, para. 71. The votes in favour were the same as those in favour of the whole; see *infra*. p.203.

resolution, as amended, was rejected by 37 votes to 37, with 6 absentions.<sup>1</sup> The seven-power draft was not pressed to a vote.

(f) The Plenary Session.

After the presentation of the report of the First Committee the President of the General Assembly read the text of a resolution submitted jointly by the delegations of Argentina, Brazil, Canada, Cuba, Dominican Republic, India, Iran, Ireland, Italy, Japan, Mexico, Norway, Peru, Spain and Thailand. The text was as follows:<sup>2</sup>

The General Assembly,

Having discussed the question of Algeria,

Recalling its resolution 1012 (XI) of 15 February 1957,

1. Expresses again its concern over the situation in Algeria;
2. Takes note of the offer of good offices made by His Majesty the King of Morocco and His Excellency the President of the Republic of Tunisia;
3. Expresses the wish that, in a spirit of effective co-operation, pour parlers will be entered into and other appropriate means utilized with a view to a solution in conformity with the Purposes and Principles of the Charter of the United Nations.

Without any further discussion, this resolution was adopted unanimously.<sup>3</sup>

1. ibid., para. 72. The details of voting were as follows:  
In favour: Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Spain, Sweden, U.K., U.S.A., Uruguay, Venezuela, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, Honduras, Iceland, Ireland, Israel, Italy, Laos.  
Against: Lybia, Malaya, Morocco, Nepal, Pakistan, Poland, Romania, Saudi-Arabia, Sudan, Syria, Thailand, Tunisia, Ukrainian S.S.R., U.S.S.R., Yemen, Yugoslavia, Afghanistan, Albania, Bulgaria, Burma, Byelorussian S.S.R., Ceylon, Czechoslovakia, Egypt, Ethiopia, Ghana, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Japan, Jordan, Lebanon, Liberia, Abstaining: Mexico, Philippines, Turkey, Bolivia, Cambodia, Guatemala.
2. ibid. Plen., 726th mtg., para. 109.
3. ibid., para. 110. The voting was 80:0. No roll-call vote was taken. Res. 1184(XII).

### 3. The Thirteenth Session.

Whereas at the previous two sessions the vast majority of States which were concerned to avoid any hint of intervention in the domestic affairs of France, had nevertheless voted for resolutions which, however it is looked at, 'dealt with' the Algerian question, by contrast at this session the same States either voted against the resolution which was ultimately adopted or abstained. However, these facts do not alter the continuing trend in the practice under consideration for it appears that while voting against this resolution some, at least, indicated their willingness to vote for milder resolutions which did not infringe the prohibition of intervention.

#### (a) The Draft Seventeen-Power Resolution.

The First Committee had before it the following draft resolution sponsored jointly by the delegations of seventeen nations:<sup>1</sup>

The General Assembly,  
Having discussed the question of Algeria,  
Recalling its resolution 1012(XI) of 15 February 1957 by  
 which the General Assembly expressed the hope that a peaceful, democratic and just solution would be found, through appropriate means, in conformity with the principles of the Charter of the United Nations,  
Recalling further its resolutions 1184(XII) of 10 December 1957 by which the General Assembly expressed the wish that  
pour parlers would be entered into, and other appropriate means utilized, with a view to a solution, in conformity with the purposes and principles of the Charter of the United Nations,  
Recognizing the right of the Algerian people to independence,  
Deeply concerned with the continuance of the war in Algeria,  
Considering that the present situation in Algeria constitutes a threat to international peace and security,  
Taking note of the willingness of the Provisional Government of the Algerian Republic to enter into negotiations with the Government of France,  
Urge negotiations between the two parties concerned with a view to reaching a solution in conformity with the Charter of the United Nations;

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1. G.A., (XIII), Annexes, a.i.63, p.2, Doc.A/4075, para. 4. The sponsors were: Afghanistan, Burma, Ceylon, Ghana, Indonesia, Iraq, Jordan, Lebanon, Liberia, Lybia, Morocco, Nepal, Saudi-Arabia, Sudan, Tunisia, U.A.R., and Yemen.



(b) Haitian Amendments to the above resolution.

Also before the Committee were two amendments to the above resolution, proposed by the delegation of Haiti.<sup>1</sup> The first of those amendments would have replaced the fourth preambular paragraph by the following:

Recognizing, in virtue of Article 1, paragraph 2, of the Charter, the right of the Algerian people to decide for themselves, their own destiny,

The second amendment would have replaced the seventh preambular paragraph with the following:

Taking note that both the French Government and the Algerian leaders have affirmed their wish to enter into negotiations,

(c) The Attitude of States - The First Committee.(i) Cuba.

In the opinion of Cuba, Article 2(7) deprived the United Nations of any jurisdiction with respect to this question, since it was a domestic matter which concerned only France. The Cuban delegate reminded Members that at the time when the United Nations had been established Algeria had been an integral part of France and no country had made any objections on that score. Without the consent of France, therefore, the United Nations could not arbitrarily alter that country's political geography. For these reasons, his delegation would be unable to vote in favour of any resolution which involved intervention in the domestic affairs of France. In his opinion, the more prudent thing for the Assembly to do was to express once more its hope for a peaceful and just solution.<sup>2</sup> Later on in the debate, he indicated his opposition to both the seventeen-power draft resolution and the Haitian amendments

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1. *ibid.*, p.3, paras. 5-6.

2. G.A., (XIII), 1st Com., 1020th mtg., paras. 5-7.

thereto. Both of these sets of proposals went beyond the limits of permitted action, in his opinion.<sup>1</sup>

(ii) The United Kingdom.

The United Kingdom again said that her participation in this debate did not alter in any way her views on competence. The British delegate then indicated his more concrete objections to the proposals.<sup>2</sup> Later in the debate, explaining his votes on the various paragraphs, the British delegate said that he had voted against the first Haitian amendment because, like the fourth paragraph of the preamble of the draft resolution it represented 'a degree of United Nations intervention in the Algerian question unwarranted under the Charter'. He had also voted against all paragraphs of the draft resolution because there seemed to be little profit in attempting to distinguish between the acceptable and unacceptable parts of a draft resolution the whole character of which seemed to be mistaken.<sup>3</sup>

(iii) Spain.

The Spanish delegate said that if the United Nations recognized the right of States to intervene in the internal affairs of other States, it would become a force for disruption rather than conciliation. The draft resolution under consideration would have had, he claimed, such an effect regardless of whether it were adopted in its original form or as modified by the Haitian amendments. His delegation would therefore abstain on all parts of it. The General Assembly, he said, should confine itself to encouraging contacts between the parties concerned as it had done at past sessions.<sup>4</sup>

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1. *ibid.*, 1023rd mtg., para. 4.

2. *ibid.*, 1022nd mtg., paras. 48-52.

3. *ibid.*, 1023rd mtg., para. 42.

4. *ibid.*, para. 20.

(d) Voting on the above proposals - First Committee

The first Haitian amendment was defeated by 48 voted to 13, with 19 abstentions.<sup>1</sup> The second one was withdrawn.<sup>2</sup> The whole resolution was adopted by 32 votes to 18 with 30 abstentions.<sup>3</sup>

(e) The Plenary Session.

At the plenary session of the General Assembly, on a motion from Ceylon the seventh preambular paragraph of the resolution approved by the First Committee was deleted in the hope that this might enable more Members to vote in favour of the whole.<sup>4</sup> However, despite this amendment, the whole resolution was rejected as it failed to receive a two-thirds majority.<sup>5</sup>

4. The Post-Repertory Period - Fourteenth to Seventeenth Sessions.

As in the debates on the affairs of South Africa so here - the longer the matter was considered the less became the interest in the question of competence and intervention. Little of any interest for the present purpose was said at

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1. *ibid*, para. 50.

2. *ibid*, para. 51.

3. *ibid*, para. 57. The details of voting were as follows:  
In favour: Guinea, Hungary, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Liberia, Lybia, Mexico, Nepal, Pakistan, Poland, Romania, Saudi-Arabia, Sudan, Tunisia, Ukrainian S.S.R., U.S.S.R., U.A.R., Yemen, Yugoslavia, Afghanistan, Albania, Bulgaria, Burma, Byelorussian S.S.R., Ceylon, Czechoslovakia, Ethiopia, Ghana.  
Against: Israel, Italy, Laos, Netherlands, New Zealand, Nicaragua, Paraguay, Portugal, Union of South Africa, U.K., U.S.A., Australia, Belgium, Brazil, Canada, Chile, Cuba, Dominican Republic.  
Abstentions: Guatemala, Haiti, Honduras, Iceland, Ireland, Japan, Mexico, Norway, Panama, Peru, Philippines, Spain, Sweden, Thailand, Turkey, Uruguay, Venezuela, Argentina, Austria, Bolivia, Cambodia, China, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, Malaya, Finland, Greece.

4. *ibid*, Plen., 792nd mtg., para. 206.

5. *ibid*, paras. 255-260.

these sessions. Belgium and Portugal, for example, tended to take up a harder line on intervention<sup>1</sup> but other than that none of the other statements are important for the present purpose. Eventually the French Government granted full independence to Algeria which was admitted to the United Nations at the seventeenth session.

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3. G.A., (XIV), 1st Com., 1070th mtg., para. 14; and *ibid*, 1078th mtg., para. 25.

## Chapter VII

### The Hungarian Question.

The communist States apart, this matter was regarded almost universally as an international matter and so the question of intervention did not arise.<sup>1</sup> The debates on this item are therefore not too relevant to the present line of inquiry. However, some of the developments are of great interest, for it appears that even the Soviet bloc has found it useful to vote for some resolutions dealing with this matter even though the States concerned had all maintained that the General Assembly could not even discuss the matter.

At the eleventh session of the General Assembly, the President brought to the attention of the Members a draft resolution, sponsored by the delegates of Argentina, Belgium, Denmark and the United States, dealing with the refugee problem which had arisen as a result of the uprising.<sup>2</sup> While Hungary did not accept the competence of the General Assembly to even discuss the question, she nevertheless submitted an amendment to this draft which, inter alia, would have had the General Assembly recommend all Governments to take speedy measures to ensure the return of Hungarian refugees.<sup>3</sup>

When the Hungarian amendments came to be voted on, the entire Soviet bloc voted in favour.<sup>4</sup>

This is but one more instance, admittedly a small one, of States saying one thing and doing another. To have been consistent, the Soviet bloc should

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1. On the international status of the matter see the Report of the Special Committee on Hungary, G.A., (XI), Suppl. No. 18, (A/5592), para. 785 (xiii); and also G.A., (XIII), Annexes, a.i. 69, A/5849, para. 8.

2. G.A., (XI), Annexes, Vol. II, a.i.67, p. 12, Doc. A/5374.

3. *ibid*, Doc. A/L.214.

4. G.A., (XI), Plen., Vol. I, 587th mtg., paras. 157-160.

have neither introduced nor voted for any resolution or amendment thereto where the subject was held to have been within the domestic jurisdiction of Hungary. These States maintained throughout these debates that the United Nations had no competence at all with respect to this subject. If that were so, how was it possible for it to deal with the refugee problem arising from the Hungarian revolution?

In fact this slight instance points again to the need to recognize that even where a matter is domestic the United Nations is not devoid of competence.<sup>1</sup>

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1. No statements relevant to the present line of enquiry are to be found in subsequent debates on this subject. The communist bloc continued to maintain that the U.N. was not competent to deal with this item and the majority of the others that the matter was not essentially domestic.

## Chapter VIII

### Requests to States to Stay Execution of Death Sentences

The general trend in United Nations practice towards an acceptance of the view that some kind of United Nations action is possible even where the subject matter is within the domestic jurisdiction of a particular State underwent curious developments in two cases dealt with by the General Assembly. These two cases raised the question whether the United Nations was in any way competent to request a State to stay sentences of death passed by its courts on its own nationals for offences against its laws. This question became important in debates on the affairs of Greece and Spain.

The debates on this subject are not conducive to any categorical conclusion, but they do indicate that the trend towards the acceptance of some kind of competence was continued, though in a very mild degree. Whereas the case histories so far examined show that there is a general tendency not to regard very mild resolutions as intervention in the domestic affairs of a particular nation, these two cases - the Greek one in particular - indicate that the majority of Members retreated even from this position. They showed themselves unwilling to address a formal resolution to a State requesting it to commute death sentences passed by its courts. At the same time, however, they were not inclined to ignore the subject altogether and deny all competence. The general trend was to accept that the United Nations was competent to address an informal request to a State to this effect, the feeling being that the prohibition of intervention was not thereby contravened.

#### I. Greece.

In its earlier years the United Nations was continually concerned with the affairs of Greece - the problems which arose out of the Greek civil war which

followed on the close of the Second World War, and the frontier disputes of that State with her Balkan neighbours. At its third, fourth, fifth and sixth sessions the General Assembly, during debates on the alleged threats to the political independence and territorial integrity of Greece, became especially concerned with the question of whether or not it was competent to address an appeal to Greece asking for clemency for certain Greeks who had been condemned to death as a result of their part in the Greek Civil War.<sup>1</sup>

These debates are of interest for the curious attitudes adopted by a considerable number of States to the question of the competence of the General Assembly and its committees to entertain such a question. The majority tended to view that a humanitarian appeal to the Greek Government not to execute the persons concerned would not amount to intervention in that State's domestic affairs, provided that it was on a very informal plane. Few of them, however, were prepared to go the length of adopting a formal resolution calling on the Greek Government to refrain from carrying out these sentences, whether the moving spirit behind such a resolution was humanitarian or not. Such a move appeared to constitute, in the majority opinion, intervention in a State's domestic affairs, whereas an informal appeal did not.

It is, of course, of considerable interest to compare the attitude adopted by the various States in this question with that adopted on the very similar question of the violation of human rights in the Soviet Union.

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1. This subject was also raised in the Security Council. However, the proceedings on this point in the Security Council are not particularly enlightening for the purposes of this study and are therefore not dealt with; See Repertory, Vol. I, p. 112.



## 1. The Third Session.

At the second session of the General Assembly, a United Nations Special Committee on the Balkans was set up to study the situation resulting from the Civil War in Greece.<sup>1</sup> This Committee consisted of Australia, Brazil, China, France, Mexico, the Netherlands, Pakistan, the United Kingdom, the United States, Poland and the U.S.S.R. The last two, of their own choice, took no part in the work of the Committee. It was in the debate ensuing on the presentation of the report of this Committee that the subject of the death sentences passed on certain trade union leaders, was raised.<sup>2</sup>

During the course of the debate in the First Committee a considerable number of resolutions was presented. The majority of those dealt with the substantive question of threats to the territorial integrity and political independence of Greece. Those presented by Yugoslavia, France and the Soviet Union, however, were concerned with the death sentences.<sup>3</sup>

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1. G.A., Res. 109(II).
  2. For a review of the history of the Committee's origin and work, see the statement of the Rapporteur to the First Committee on the presentation thereto of the Committee's first report, G.A., (III/1) 1st Com., 171st mtg., pp. 261-264.
  3. Resolutions, or amendments to resolutions dealing with the general question of threats to the territorial integrity and political independence of Greece were submitted by the following States:
    - a. Jointly by the delegations of China, France, the United Kingdom and the United States, G.A., (III/1), 1st Com., Annexes, a.i.15, p. 29, Doc. A/C.1/352.
    - b. El Salvador, *ibid.*, p. 40, Doc. A/C.1/357.
    - c. Australia, *ibid.*, p. 41, Doc. A/C.1/361.
    - d. Australia, *ibid.*, p. 42, Doc. A/C.1/362.
    - e. Yugoslavia, *ibid.*, p. 46, Doc. A/C.1/368.
    - f. Poland, *ibid.*, p. 47, Doc. A/C.1/370.
    - g. Dominican Republic, *ibid.*, p. 48, Doc. A/C.1/374. (This was an amendment to an amendment proposed by the Lebanese delegation, Doc. A/C.1/359, which, for some reason, is not reproduced in the Annexes.)
    - h. Poland, *ibid.*, p. 49, Doc. A/C.1/375.
    - i. Belgium, *ibid.*, p. 55, Doc. A/C.1/378.
    - j. Greece, see 1st Com., 190th mtg. p. 496; Doc. A/C.1/354.

At the 186th meeting of the First Committee, the Yugoslav delegation introduced the following draft resolution:<sup>1</sup>

The First Committee

Calls upon the Royal Greek Government to take steps to see that the trade union leaders Ambatielos, Gatalis, Diakrousis, Timoyankis, Katsanis, Rapisis, Koliarkis, Gotsis and Lambadarios are not executed.

In introducing this resolution the Yugoslav delegate, Mr. Bebler, said that as the United Nations are enjoined to defend human rights, it should take steps to save these lives. At the same meeting of the First Committee the Polish delegate, Mr. Katz-Suchy, asked that this draft resolution should have priority in the debate as it was a matter of urgency in which human lives were involved.<sup>2</sup>

(a) The Attitude of States towards the Yugoslav proposal.<sup>3</sup>

The Venezuelan delegate, Mr. Stalk, said that his delegation looked upon the appeal made by the Yugoslav delegation with sympathy but doubted whether the matter was within the competence of the Committee or the General Assembly since Article 2, paragraph 7, of the Charter forbids intervention by the United Nations in matters which were essentially within the domestic jurisdiction of any State.<sup>4</sup>

The Greek delegate, Mr. Pipinelis said that while the incident was outside the competence of the Committee and the General Assembly, he was ready to enter into a discussion and to examine the dispatch which was the

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1. See G.A., (III/1), 1st Com., 186th mtg., p. 427; and *ibid*, Annexes, a.i., 15, p. 48, Doc.A/C.1/571.

2. G.A., (III/1), 1st Com., 186th mtg., p. 441.

3. Contrary to normal practice, the statements of the various delegations are set out here in the order in which the States spoke, and have not been grouped according to their various attitudes.

4. G.A., (III/1), 1st Com., 186th mtg., p. 442.

origin of the present request.<sup>1</sup>

The Polish representative, Mr. Katz-Suchy, said that he did not agree that the matter fell under Article 2, paragraph 7 of the Charter, for the whole Greek question was an internal affair which had become an international problem because of the Civil War and this was only one of its many aspects.<sup>2</sup>

The Venezuelan delegate, in augmentation of the statement made earlier in this debate said that he saw the humanitarian aspect of the problem but doubted the competence of the Committee. In his opinion, it could not examine the laws of Greece and the sentences of its courts without interfering in its domestic affairs. Referring to Venezuela's intervention with the Spanish Government on behalf of certain individuals, he appealed that the question raised by the Yugoslav delegation should be settled outside the Committee through the good offices of the delegations, on humanitarian grounds and without prejudice to the good faith of the Greek Government.<sup>3</sup>

M. Couve de Murville, the French representative, said that the Yugoslav draft resolution raised complicated legal problems since it was not clear whether the Committee or the Assembly had the competence to deal with it. Nevertheless he agreed that it was a humanitarian matter to which the Committee could not remain indifferent. He therefore suggested that the Committee take up the suggestion of the Greek representative and decide to proceed with its discussions on the various draft resolutions on the Greek question on the understanding that the Chairman of the Committee would get in touch with the

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1. *ibid*, p. 442.

2. *ibid*, p. 442.

3. *ibid*, p. 443.

head of the Greek delegation to see if any measure could be taken in the matter raised by the Yugoslav delegation.<sup>1</sup>

The Greek delegation indicated its support for the French proposal.<sup>2</sup>

The Syrian delegation expressed similar doubts on the competence of the Committee to adopt a recommendation on this subject and thought that it ought to limit itself to calling on the Greek Government to examine the matter.<sup>3</sup>

The delegate of Ecuador pointed out that his country had abolished capital punishment over fifty years before. He was therefore in favour of any measures which would save lives. However, he indicated that he had strong doubts as to whether the Committee could take a definite decision on this matter and thought that the Committee could give effect to its desire through its Chairman rather than by voting on a matter beyond its competence.<sup>4</sup>

The Soviet delegate said that all legal argument should be subordinated to the voice of conscience and justice.<sup>5</sup>

In supplement of what he had said earlier, M. Couve de Murville said that earlier he had not proposed that there should be a vote upon any resolution in this connection, first because the Committee was aware only of a telegram on the subject from the Federation of Greek Maritime Unions<sup>6</sup> and could not therefore take a decision on the substance of the matter, and secondly, because it was doubtful whether the question was within the competence of

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1. *ibid*, p. 445.

2. *ibid*, p. 445.

3. *ibid*, p. 445.

4. *ibid*, p. 445.

5. *ibid*, p. 444.

6. See *ibid*, p. 427, per Yugoslavia.

the Committee or the General Assembly. However, because of the humanitarian aspects of the matter, he suggested that the Committee note the suggestion made by the Greek representative that he discuss the matter with the Chairman and that the Committee proceed with its debate.<sup>1</sup>

The Soviet delegate, Mr. Vyshinsky, said that he believed that the representative of France was incorrect in believing that the Yugoslav proposal should be dismissed as interference in the internal affairs of Greece. It was, he said, no more than an appeal to the Greek Government. It was a matter of saving lives. The appeal should be made in the interest of justice and there was no necessity to study the matter fully. The Committee should make the voice of humanity heard.<sup>2</sup>

In the opinion of the United Kingdom, it was doubtful whether the Committee was competent to deal with the matter. It was true, Mr. McNeil said, that Article 2, paragraph 7, was difficult to interpret, but if the Committee arrogated to itself the right to reverse decisions taken by the courts of Member States, that task might become its only work.<sup>3</sup>

Mr. Stalk of Venezuela said that he believed that a humanitarian proposal to save lives was one which should be given priority. The delegations should not waste time discussing the whole matter, but should adopt a practical solution. He therefore suggested that the Chairman of the Committee, acting outside his office, might prepare a telegram to the Greek Government which did not prejudice the question but asked for clemency and this telegram would be open for the signature of any delegation.<sup>4</sup>

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1. *ibid*, p. 444.

2. *ibid*, p. 444.

3. *ibid*, p. 444.

4. *ibid*, p. 445.

The Greek delegate, Mr. Pipinelis, said that when he had previously spoken he had not yet read the Yugoslav draft resolution contained in Document A/C.1/371. He had now received that paper and remarked that it constituted an invitation to the Committee to intervene in Greek affairs solely on the basis of a telegram which it had not seen. The question of competence arose, he said. Nevertheless, he supported the French suggestion which would, he believed, satisfy the Committee's constitutional requirements and also the humanitarian sentiments of the Members.<sup>1</sup>

At this point in the debate, the Chairman of the Committee read out a formal French proposal. The text was as follows:<sup>2</sup>

The First Committee,  
 Having noted the offer made by the Greek Government to get in touch with the Chairman of the Committee for the purpose of examining the matter raised by the Yugoslav delegation, and trusting that the Chairman will take all the necessary steps to that end,  
Proceeds to the next item on the agenda,

As soon as this French proposal had been formally submitted to the Committee, the Soviet delegate, Mr. Vyshinsky, introduced an amendment which would have deleted the words 'take all the necessary steps to that end', and substitute for them the words 'take measures to save the lives of the trade unionists who have been condemned to death'.<sup>3</sup>

Greece maintained that this was not an amendment to the French proposal at all, but a completely new resolution.<sup>4</sup> Yugoslavia, on the other hand, maintained that the Soviet amendment only clarified the French proposal by

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1. *ibid*, p. 445.

2. *ibid*, p. 446; Doc.A/C.1/372.

3. *ibid*, p. 446; Doc.A/C.1/373.

4. *ibid*, p. 446.

specifying the steps to be taken.<sup>1</sup>

The United Kingdom said that it could not accept the Soviet amendment as it put the subject in an improper light and converted the French suggestion into an appeal to the Greek Government to set aside the decisions of its courts. His delegation could not be a party to such an approach to any Government. However, it would, Mr. McNeil said, support action which was not formal but expressed personal anxieties. Moreover, he pointed out that if it was desired to base the proceedings on the Charter, it should be noted that the Committee had no executive functions. He suggested that Mr. Vyshinsky should not insert a phrase with a political connotation when the Committee was seeking to avoid having the question of competence raised.<sup>2</sup>

M. Couve de Merville, on behalf of France, said that the spirit which had motivated his suggestion had been humanitarian, not political. However, the U.S.S.R. amendment changed the spirit of his draft resolution by entering into matters of substance. This was, he claimed, unnecessary and the moral value of the French suggestion would be diminished if it became necessary to take a vote upon the U.S.S.R. amendment.<sup>3</sup>

Mr. Vyshinsky, on the other hand, was surprised at the suggestion that his amendment had a political character since it merely asked in a humanitarian way that certain men should not be executed. It was not, he said, a question of propaganda but of giving clear instructions to the Chairman. He pointed out that his amendment did not call for the revocation of the sentences but

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1. *ibid.*, p. 446.

2. *ibid.* p. 446.

3. *ibid.* p. 446.

only that the Chairman take steps to save human lives. With regard to the Yugoslav proposal, he believed that there should be no legal quibbling about interference in internal affairs. There was nothing political in the proposal; it was entirely humanitarian and in no way violated the Charter.<sup>1</sup>

Mr. Castro, of El Salvador, on a point of order, observed that the Committee should separate the question of competence from the humanitarian question. He reminded the Committee that his country had previously maintained that it could not entertain the Yugoslav proposal and now added that in the opinion of his country it could not deal with the Soviet amendment either.<sup>2</sup>

There followed a short discussion on the question of competence between the representatives of Poland, El Salvador and the Chairman of the Committee, from which it was made clear that the question of the Committee's competence was only relevant to the Yugoslav proposal and the Soviet amendment and not to the French proposal. However, no reasons were given for this conclusion.<sup>3</sup>

The delegate of Belgium then added his voice to those who maintained that the Committee was not competent to entertain the Yugoslav proposal.<sup>4</sup>

( b ) Voting on the various proposals.

The Committee decided that it was competent to entertain neither the

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1. *ibid*, p. 447.

2. *ibid*, p. 447.

3. *ibid*, p. 448.

4. *ibid*, p. 448.



Yugoslav proposal<sup>1</sup> nor the Soviet amendment to the French one.<sup>2</sup> However it adopted the French proposal by 41 votes to 0, with 9 abstentions.<sup>5</sup>

(c) Conclusions.

The vote on the Yugoslav proposal and on the Soviet amendment to the French one showed very decisively that at the third session of the General Assembly, at least, the majority of delegations felt that the United Nations was not competent to call on a State, formally, by means of a resolution, to suspend or otherwise interfere with decisions handed down by its courts. Nevertheless, the fact that the French proposal was adopted and by such a large majority also shows that the majority felt that the domestic status of the question did not bar all United Nations action on the subject. It is significant, for example, that no State belaboured the argument that as the matter was domestic the General Assembly was incompetent even to discuss the

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1. G.A.,(III/1), 1st Com., 186th mtg., p. 449. The voting - 45.6.2. - was as follows:  
In favour: Byelorussian S.S.R., Czechoslovakia, Poland, Ukrainian S.S.R., U.S.S.R., Yugoslavia.  
Against: Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, Ethiopia, France, Greece, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Peru, Sweden, Syria, Turkey, Union of South Africa, U.K., U.S.A., Venezuela, Yemen, Afghanistan, Australia, Argentina, Belgium, Bolivia, Brazil.  
Abstentions: Ecuador, Uruguay.
2. *ibid.* The voting - 37.6.6. - was as follows:  
In favour: Byelorussian S.S.R., Czechoslovakia, Poland, Ukrainian S.S.R., U.S.S.R., Yugoslavia.  
Against: Canada, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, Ethiopia, France, Greece, Honduras, Iceland, India, Iraq, Lebanon, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Peru, Sweden, Turkey, Union of South Africa, U.K., U.S.A., Yemen, Argentina, Australia, Belgium, Bolivia, Brazil.  
Abstentions: Costa Rica, Ecuador, Syria, Uruguay, Venezuela, Afghanistan.
3. *ibid.* There was no roll-call, the vote being taken on a show of hands.

item.

However, the fact that the action finally taken by the Committee was of such an informal nature emphasises the lack of competence in such a case to adopt a formal resolution addressed to the State in question. The Soviet bloc States apart, all States which spoke indicated their support for the informal humanitarian appeal through the Chairman of the Committee, but at the same time, were unwilling to commit themselves to a formal resolution. To adopt a formal resolution seemed, to those States, to involve the United Nations in intervention in the domestic affairs of a State.

The implications of this debate are rather wide, for indeed, it seemed to be the prevailing opinion that any formal resolution addressed to the Greek Government would amount to intervention. There was not evident the tendency seen in other cases to distinguish between different types of formal resolutions. On the contrary, there was present a strong desire to avoid adopting any formal resolution, no matter how mild its content. The almost universal desire was to leave the subject to behind-the-scenes informal negotiations between the Chairman of the Committee and the head of the Greek delegation.

It is worthy of note, however, that in the Soviet view even a formal 'humanitarian' appeal did not constitute intervention in the domestic affairs of a Member State. In Mr. Vyshinsky's opinion, there should have been no legal quibbling over such a humanitarian appeal. Oddly enough, this was not the attitude taken by the Soviet Union in the question regarding the refusal of the Soviet authorities to allow Russian born wives of foreign nationals to leave Russia in the company of, or in order to join, their husbands. In that case the Soviet Union maintained that to adopt any

resolution on that subject would constitute intervention in her domestic affairs.

## 2. The Fourth Session.

The subject of the threats to the political independence and territorial integrity of Greece was again raised at the fourth session of the General Assembly and along with it the attendant subject of the conduct of Greek courts.

At this session, a variety of resolutions was presented dealing with the death sentences passed on Greek nationals. However, the prevailing opinion on the question of the competence of the General Assembly and its committees to adopt these does not appear to have varied a great deal from that evident at the third session. At this session also the only resolution to gain acceptance was one which did not call formally on the Greek Government to take steps to commute the sentences passed by its courts, but left it to an officer of the United Nations to convey the feelings of the Members to the Greek Government.

Early in the debate, Poland introduced a resolution calling on the Greek Government to suspend all executions and court martial procedures in that country. The resolution was as follows.<sup>1</sup>

Taking into consideration the attempts to reach a solution to the Greek question through the formation of a Conciliation Committee and other conciliatory means,

The First Committee

Appeals to the Greek authorities to suspend all

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1. G.A.,(IV), 1st Com., Annexes, a.i.21, p. 12, Doc.A/C.1/485. The Conciliation Committee referred to was proposed by the Australian delegation in its resolution which dealt with the whole Greek question, not just the question of political executions; see G.A.,(IV), Plen. Annexes, a.i.21, p.61, Doc.A/1062 and Corr.1, para. 7.

executions and all court martial procedures and in particular to set aside the death sentences issued by the Military Tribunal in Piraeus against Catherine Zevgos.

In introducing this resolution the Polish delegate, Mr. Katz-Suchy, said that since the question of conciliation had been brought forward it should be remembered that, if it was to be successful and if a stable peace was to be established, certain preliminary moves were required on the part of the Greek Government. The First Committee should, he said, appeal to the Greek authorities in the interest of a solution through conciliation to suspend political terrorism, executions and courts martial immediately. The press daily gave news of persons sentenced for their political beliefs, he said, In particular he called to the notice of the Committee the case of Catherine Zevgos, sentenced to death by a military tribunal at Piraeus. If the Greek Government genuinely desired peace and that the conciliation committee should succeed in its task, its first step should be the good will gesture of suspending such activities.

(a) Attitudes of States towards this proposal.

The Byelorussian delegate, Mr. Kiselev, said with regard to the information concerning Catherine Zevgos, that she had been sentenced solely for her progressive opinions and her refusal to subscribe to the actions of the Greek Government. That was typical, he claimed, of the terrorism pursued by the Athens regime and would not foster the results which the Committee was seeking. His delegation believed that the Committee should approve the draft resolution appealing against the death sentence and thus produce evidence on the part of the Greek Government of a desire to co-operate and to end its terrorism.<sup>1</sup>

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1. G.A., (IV), 1st Com., 275th mtg., para. 8.

Liberia opposed the Polish draft resolution because it dealt with the internal affairs of Greece.<sup>1</sup>

The United Kingdom did not state clearly at this stage what her attitude towards the Polish draft was. The British delegate, Mr. McNeil, inferred that the matter was within the domestic jurisdiction of Greece, but then added that it would be very difficult for any United Nations organ to reject or assume a neutral attitude towards any humanitarian approach such as that which the Polish representative had made.<sup>2</sup>

The Yugoslav delegate, Mr. Djilas, said that the question of ending the repression in Greece was purely a humanitarian one. He did not deal explicitly with the question of domestic jurisdiction.<sup>3</sup>

Mr. Vyshinsky, on behalf of the Soviet Union, said that his country regarded the Polish proposal, which was concerned with the repressive measures being taken by the Greek Government, and in particular with the sentencing of individuals solely because of their democratic convictions, as in the case of Catherine Zevgos, as an essentially humanitarian one and that the Soviet Union intended to support it. He criticised the legalistic attitude of the United Kingdom in the matter. It was true, he admitted, that the delegation of the Soviet Union had in the past opposed interference in the internal affairs of States on the basis of Article 2, paragraph 7 of the Charter. It had opposed such interference with regard to the charge of violation of human rights in Bulgaria and Hungary and it would certainly

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1. *ibid.*, para. 9.

2. *ibid.*, paras. 12-13.

3. *ibid.*, para. 17.

maintain the same attitude in connection with such cases in the future. But, he contended, this situation was different. This appeal was directed to humanitarian feelings which were stronger than legal considerations. Furthermore, in the case of Catherine Zevgos, there was no reason to inflict such a harsh punishment. She was the victim of injustice.

Mr. Vyshinsky went on to recall that the proposed appeal was not without precedent. During the third session of the General Assembly, he said, the First Committee had issued a similar appeal to the Greek Government on behalf of certain Greek trade union leaders, which had resulted in the postponement of their execution.<sup>1</sup> At that time, he claimed, Article 2, paragraph 7 of the Charter had not been applied and the appeal had been based only on humanitarian considerations. The present Polish proposal was, he said, similar and was likewise an appeal to the conscience of mankind. The proposal was simply a request to the Chairman of the First Committee to contact the Greek delegation with a view to setting aside the death sentence passed upon a woman who had been unjustly convicted. Mr. Vyshinsky said he was convinced that all delegations imbued with humanitarian ideals would vote in favour of its adoption.<sup>2</sup>

In reply to the Soviet statement, the representative of Greece, Mr.

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1. It will be noted, however, that Mr. Vyshinsky somewhat overstressed the effect of the resolution adopted at the third session. It did not appeal to the Greek Government, but merely noted the offer of the Greek delegation to discuss the matter with the Chairman of the First Committee; see *supra*, p. 218.
  2. G.A., (IV), 1st Com., 275th mtg., paras. 19-20. It will be noted, however, that the Polish proposal in fact made no mention of the Chairman of the First Committee and was in fact a direct appeal to the Greek Government.

Pipinelis, recalled that Mr. Vyshinsky had maintained that nothing in the Charter could be construed as forbidding an appeal to humanitarian feelings. But, he said, to accept such an appeal presupposed a conviction of truth. Suppose, he said, that the individuals concerned had been rightly condemned. In such circumstances there could be no appeal to humanitarian considerations.<sup>1</sup>

The Ukrainians endorsed the Soviet arguments on the Polish draft resolution.<sup>2</sup>

Poland maintained that the First Committee was quite competent to deal with a question of a purely humanitarian character.<sup>3</sup>

The Colombian delegation recalled that there had been no capital punishment in its country for the past fifty years and did not think it was possible for States which had abandoned capital punishment for political crimes to reject the Polish appeal for clemency. He was, he said, fully aware of the legal difficulties, but pointed out that any work of conciliation such as that proposed by the Australian delegation must necessarily consider questions which overlapped the domestic jurisdiction of countries. The Colombian representative went on to add that he hoped that the spirit of clemency which would be shown by the First Committee in adopting the Polish proposal would extend to the discussions in the Ad Hoc Political Committee relating to the violation of fundamental and religious rights of individuals in certain European countries.<sup>4</sup>

The representative of Cuba, Mr. Alvarez, said that his country considered

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1. *ibid*, para. 26.

2. *ibid*, para. 33.

3. *ibid*, para. 37.

4. *ibid*, para. 38.

the Polish draft resolution to be much more a political than a humanitarian one and therefore might be construed as intervention in the affairs of a State. His delegation might, however, vote for a specific appeal for clemency in the case of Catherine Zevgos and therefore he proposed an amendment to the Polish draft resolution. This amendment replaced the second paragraph of the Polish draft with the following:<sup>1</sup>

The First Committee,

Resolves that the Chairman of the First Committee addresses to the Greek authorities a humanitarian appeal for the suspension of the death sentence on Catherine Zevgos without involving any intervention in the internal affairs of Greece.

Poland accepted the Cuban amendment in the interest of gaining a unanimous decision.<sup>2</sup>

El Salvador also objected to the Polish proposal. On behalf of that country Mr. Castro urged that the matter be considered from a more realistic point of view. For a Committee of the General Assembly to appeal for commutation of a sentence passed by a tribunal of one of the Member States obviously, he said, meant that pressure was being exercised in an essentially domestic question and it was therefore a violation of Article 2, paragraph 7 of the Charter. Nevertheless he said, there was clearly something which the Committee could do in the matter. Mr. Castro went on to recall that in a similar situation the French delegation had presented a successful proposal which had merely expressed the opinion of the First Committee and had left it to the Greek delegation to present that opinion to its Government. Therefore, in accordance with that precedent, he submitted the following

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1. *ibid*, para. 39; Doc.A/C.1/434.

2. *ibid*, para. 46.



draft resolution:<sup>1</sup>

The First Committee,

Resolves to authorize the Chairman and Vice-Chairman of the Committee to approach the representatives of Greece in order to make clear to them the satisfaction with which the First Committee would view the Greek Government's efforts to exercise all possible moderation, as far as is consistent with justice, in the punishment of acts prejudicial to the internal peace of Greece.

The delegate of the Philippines said that his country favoured in principle all humanitarian appeals on behalf of political offenders. In the case in point, the Philippine representative, Mr. Lopez, said that his country supported the Cuban delegation's amendment to address an appeal to the Greek authorities for the suspension of the death sentence on Mrs. Zevgos. It also supported the draft resolution of El Salvador.<sup>2</sup>

Iraq expressed itself wary of making any appeal to the Greek Government on this account. The Iraqi delegate, Mr. Al-Jamali, lent his support to the proposed conciliation commission, but said that it was essential to observe two principles. The first was that only the lawful government of a country could take action when subversive elements tried to destroy its authority. Any assistance to such rebels would constitute interference in a State's internal affairs. The second was that a foreign government had no right to comment on internal measures taken by the legally constituted authorities of a State for the purpose of preserving peace within its frontiers.<sup>3</sup>

In a further statement on the question the Greek representative,

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1. *ibid*, para. 46; Doc.A/C.1/485.

2. *ibid*, 276th mtg., para. 4.

3. *ibid*, paras. 8-9.

Mr. Pipinelis, preferred to go into the substance of the charges rather than rely on arguments based on Article 2, paragraph 7.<sup>1</sup>

In the light of the Greek statement on the substance of the matter, the delegation of El Salvador withdrew its draft resolution and declared its intention of voting against the Polish draft which it now considered to be based on political rather than on humanitarian considerations.<sup>2</sup>

China said that she objected to the Polish proposal for in her opinion, it was a political manoeuvre in a humanitarian guise, and in addition constituted interference in the internal affairs of Greece.<sup>3</sup>

Like El Salvador, Cuba also decided to withdraw its amendment to the Polish resolution. In the light of the Greek statement, Cuba considered that the Polish proposal was pointless.<sup>4</sup>

Uruguay indicated her opposition to the Polish draft, but claimed that her opposition was not based on Article 2, paragraph 7 but on her opinion that the Polish resolution was a political manoeuvre.<sup>5</sup>

Ecuador opposed the Polish draft lest it hamper the work of the Conciliation Commission.<sup>6</sup>

Turkey, however, opposed the Polish draft because she considered it to constitute intervention in Greece's internal affairs.<sup>7</sup>

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1. *ibid*, paras. 22-29.

2. *ibid*, para. 36.

3. *ibid*, para. 37.

4. *ibid*, para. 38.

5. *ibid*, para. 40.

6. *ibid*, para. 47.

7. *ibid*, para. 49.

Syria felt that the Polish draft resolution was no longer required since the death sentence on Mrs. Zevgos had already been suspended.<sup>1</sup>

The United Kingdom seemed to infer that the Polish draft resolution constituted interference in Greece's internal affairs.<sup>2</sup>

France also felt that any approach to the Greek Government would be superfluous, in view of the statement made by the Greek representative to the First Committee. M. Couve de Murville said that the Polish proposal had raised two problems. On the one hand it appealed to humanitarian feelings. On the other it touched upon the competence of the United Nations. To avoid that situation, he had intended, he said, before the statement of the representative of Greece to propose that the question should be referred to the Chairman of the Committee so that he could take the necessary measures consistent with the ideas expressed by the Committee. However, the statement by the Greek representative had, in his opinion, rendered this unnecessary also.<sup>3</sup>

Colombia also came to the same conclusion.<sup>4</sup>

India stated that she favoured the idea of a humanitarian appeal, but in this instance felt that the efforts at conciliation would have a better chance of success if the Polish proposal were not adopted.<sup>5</sup>

(b) Voting of the Polish proposal

The Polish proposal was rejected by 41 votes to 6, with 9

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1. *ibid*, para. 50.

2. *ibid*, para. 61.

3. *ibid*, paras. 62-63.

4. *ibid*, paras. 64-65.

5. *ibid*, para. 69.

abstentions.<sup>1</sup>

(c) Conclusions.

The opinions voiced in this debate did not differ substantially from those expressed during the previous year's debate. The majority of delegates seemed to be of the opinion that some kind of measures could be taken with reference to the death sentences passed by Greek courts and the reason no action was, in the final analysis, taken was because the majority of delegates seemed to feel that the statement of the Greek delegate made United Nations action superfluous.

Nevertheless, it should not be overlooked that the type of appeal which found most favour was again one which was not addressed directly to the Greek Government, but which left the matter in the hands of the Chairman of the First Committee. As in the third session, delegates showed themselves wary of addressing an appeal directly to the Greek Government in such a domestic matter.

As in the third session a prominent feature of this debate was the importance which the Soviet bloc countries attached to humanitarian considerations. These, in their opinion, seemed to outweigh all legal aspects of the matter. Of course, the item did not concern any humanitarian question

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1. *ibid*, paras. 73-76. The details of voting on the whole resolution were as follows:

In favour: Byelorussian S.S.R., Czechoslovakia, Poland, Ukrainian S.S.R., U.S.S.R., Yugoslavia.

Against: Argentina, Australia, Belgium, Bolivia, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Ethiopia, France, Greece, Guatemala, Honduras, Iceland, India, Lebanon, Liberia, Iraq, Mexico, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sweden, Turkey, Union of South Africa, U.K., U.S.A., Uruguay, Venezuela.

Abstaining: Afghanistan, Chile, Egypt, Iran, Israel, Saudi-Arabia, Syria, Thailand, Yemen.

which has its situs within their frontiers.

(d) The second phase of the debate in the fourth session.

Later on in the same debate, the subject of death sentences passed for political reasons by Greek courts was again brought up. At the 294th meeting of the First Committee the Soviet delegation complained anew of the political terrorism in Greece and introduced the following resolution.<sup>1</sup>

Taking note of the fact that the military courts in Greece are at the present time continuing to pass death sentences on members of the people's liberation movement and that on 13 October last the Athens military court sentenced to death eight prominent public figures, heroic fighters against the Hitlerite invaders - Evangelia Saradgis, Dimitrios Mouratidis, Artemios Joanidis, Sotiris Barbounakis, Georgios Iliopoulos, Jakavos Thamelis, Antonios Srtelakes and Katherine Telahani (Zevgos),

The First Committee,  
Calls upon the Greek Government to suspend the carrying out of the death sentences passed on the above mentioned persons and to repeal these sentences.

The Greek delegate again went into the substance of the charges and did not dismiss them, relying on Article 2, paragraph 7.<sup>2</sup>

The United States pointed out that the Committee had repeatedly held that it was not competent to deal with individual cases of death sentences.<sup>3</sup>

In reply to this, Czechoslovakia said that if objection was taken to the mention of specific people in the Soviet draft resolution, these names could be deleted and the appeal made general.<sup>4</sup>

The Philippines indicated her intention to abstain for, in her opinion, the question of the executions could not be dealt with apart from the Greek question

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1. G.A.,(IV), 1st Com., Annexes, a.i.,21, p. 16, Doc.A/C.1/507.

2. G.A.,(IV), 1st Com., 294th mtg., paras. 8-19.

3. *ibid*, para. 35.

4. *ibid*, para. 60.

as a whole.<sup>1</sup>

New Zealand inferred that the Soviet proposal amounted to intervention. Sir Carl Berendsen said that it was possible that the people mentioned in the Soviet draft were innocent but they might equally well be guilty. Moreover, he said, even if the Committee was fully acquainted with the facts, it could not make demands of a Member State to suspend measures it intended to take.<sup>2</sup>

Thailand, on the other hand, supported the idea of an appeal to Greece in principle but indicated her intention to abstain because of the lack of information on the subject.<sup>3</sup>

Mexico also wished to do something for the condemned but was wary of addressing a direct request to the Greek Government. The Mexican delegate, Mr. de Alba, said that although the Committee had no right to ask the Greek Government to show mercy to the eight persons who had been condemned to death, mentioned in the Soviet draft resolution, it could send the official records of the meetings relating to the examination of the question to the President of the General Assembly and the Secretary-General of the United Nations asking them to use their good offices to induce the Greek Government to show clemency. In Greece such a step, while not infringing national sovereignty, would restore an atmosphere favourable to the settlement of those differences which had brought the country to its present pass.<sup>4</sup>

In the opinion of the United Kingdom, the matter was beyond the competence of the United Nations. The Committee could not, in her opinion, prevent the

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1. *ibid*, paras. 61-62.

2. *ibid*, para. 72.

3. *ibid*, 295th mtg., para. 2.

4. *ibid*, para. 5.

Greek Government from administering justice on its own territories or from passing sentences. The First Committee was not, Sir Terence Shone reminded the Members, a court of appeal and should proceed without further delay to deal with matters within its competence.<sup>1</sup>

Similarly, Belgium opposed the Soviet proposal because it sought to substitute the First Committee for the Court of Appeals.<sup>2</sup>

Poland, on the other hand seemed to think that humanitarian interests rendered Article 2(7) of no account.<sup>3</sup>

Chile and El Salvador opposed it more for political reasons.<sup>4</sup>

The position of Ecuador was similar to that adopted by Mexico. Like Mexico, Ecuador did not want to see any direct approach made to the Greek Government on this subject, but on the other hand did feel that some measures should be taken to indicate the feelings of the Members of the Committee.

On the one hand, the Ecuadorean representative maintained that the matter was not entirely within the domestic jurisdiction of Greece. It had, in his opinion, certain international repercussions, a view which would seem to indicate that in his country's opinion, the United Nations would be competent to deal with it. On the other hand, however, he thought that the First Committee was not competent to approach the Greek Government directly. In his opinion the First Committee could only recommend the conciliation commission to appeal to the Greek Government in the most suitable manner in order

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1. *ibid*, para. 10.

2. *ibid*, para. 12.

3. *ibid*, para. 14.

4. *ibid*, paras. 17-18; and 19-20 resp.

to establish an atmosphere of conciliation. Alternatively, if the conciliation commission were not to continue its work it would, in the opinion of Ecuador, be in order for the Chairman of the First Committee to open negotiations and to come to some agreement with the Greek delegation concerning the suspension of these executions.<sup>1</sup>

Colombia recognized that the First Committee was not competent to entertain specific cases and that only the State concerned could apply laws and impose sentences. Nevertheless, in her opinion, the First Committee could not turn a deaf ear to the appeals for leniency and to that end she submitted the following resolution:<sup>2</sup>

In connection with the discussions regarding the death sentences pronounced by the military tribunals in Greece, and with a view to seeking an atmosphere of conciliation and justice in the world,

The First Committee of the General Assembly addresses a request to all the Governments of the world that death sentences already passed for crimes of a political nature be suspended taking into consideration that a universal practice of clemency would favour the plans for the re-adjustment of peace and security.

A general resolution of the type proposed by Colombia found another supporter in Chile. Her representative said that Chile could not support a resolution which dealt with specific cases. Such a resolution went beyond the competence of the United Nations. However, he was prepared, he said, to support one which included all possible cases of political executions taking place in countries in which a state of war existed.<sup>3</sup>

Again, in the 296th meeting of the First Committee, the Mexican delegate, Mr. de Alba, stressed that the only way in which the Greek Government could be approached in this matter was indirectly.<sup>4</sup>

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1. *ibid*, paras. 40-47.

2. *ibid*, paras. 48-54; the text of the resolution is to be found in G.A., (IV), 1st Com., Annexes, a.i.21, p. 16, Doc. A/C.1/510.

3. G.A., (IV), 1st Com., 296th mtg., paras. 1-3.

4. *ibid*, para. 10.



Conversely, Canada claimed that the matter of the death sentences was altogether outside the competence of the United Nations.<sup>1</sup>

The humanitarian aspects of the matter, however, persuaded Paraguay also that something ought to be done. In her opinion, the problem had a dual aspect, a legal and a humanitarian one. As regards the legal aspect, Mr. Boettner said that clearly the First Committee was not a court of appeal and did not have the necessary evidence to make a decision. Moreover, if it did so, it might also be violating the principle of non-intervention in the internal affairs of States. As regards the humanitarian aspect, however, something had to be done. In his opinion, the correct course for the First Committee to take would be to appeal for leniency for those condemned to death by military tribunals and for an end to acts of sabotage and terrorism which often resulted in the death of innocent victims.<sup>2</sup>

The Soviet Union maintained that it was not a question of interfering in the internal affairs of a State but a matter of conscience.<sup>3</sup>

(e) Other resolutions submitted on this subject at the fourth session.

In the course of this second part of the debate on this item, the delegations of Uruguay and Ecuador also submitted resolutions designed to secure clemency for those under sentence of death.

(i) The Uruguayan Draft Resolution.

The draft resolution submitted by the delegation of Uruguay was as follows:<sup>4</sup>

Taking into consideration the problem of criminal punishment arising out of the discussion of the item on

1. *ibid*, para. 14.

2. *ibid*, paras. 24-26. Paraguay submitted a proposal to this effect, Doc. A/C.1/509, the text of which is not, however, reproduced in the annexes.

3. *ibid*, para. 33.

4. G.A., (IV), 1st Com., Annexes, a.i.21, p. 17, Doc. A/C.1/511/Rev.1.

the threats to the political independence and territorial integrity of Greece, and with a view to avoiding any a priori pronouncement, whether explicit or implicit, in connection with the expressions of disapproval voiced, and,

Having due regard to the ideas and sentiments dominant in the minds of the representatives who have taken part in the discussion of this item,

The First Committee,

Resolves

To recommend the commutation of all death sentences passed in any of the countries applying this penalty in accordance with their domestic legislation.

Urging them at the same time to eliminate this penalty from their legislation.

(ii) The Ecuadorean Draft Resolution.

The draft Ecuadorean resolution was as follows:<sup>1</sup>

The First Committee,

Requests the President of the General Assembly to negotiate with the representatives of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons, as long as the Conciliation Committee is in existence.

(f) The Question of Competence.

After all these proposals had been discussed the delegates of Venezuela and Lebanon each proposed that the question of the competence of the Committee to decide on them should be dealt with.<sup>2</sup>

In this case, however, the question of competence was more complicated than at first sight it seemed, and the resultant votes on this subject did nothing to clarify it.

First, there was the question whether the Committee had indeed been competent to discuss the matter. Secondly, if the Committee was competent to discuss the matter, it had to be decided whether or not it was competent to adopt any of the proposals concerned. This latter question was more than usually complicated, for

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1. *ibid.*, p. 17, Doc. A/C.1/512/Rev.1.

2. G.A., (IV), 1st Com., 297th mtg., paras. 19 and 16 resp.

not only had it to be decided whether or not the action proposed amounted to intervention in the domestic affairs of Greece, but there was also an internal constitutional problem to be dealt with. As the delegate of Venezuela reminded the Committee,<sup>1</sup> the First Committee could not make direct recommendations to a Member State. Only the General Assembly had this power. The First Committee had no executive power.

When, however, the question of competence was put to the vote, it was not clear what aspect of the competence problem was being dealt with. Most States seem to have confined their attention to those aspects of the competence question which revolve round Article 2(7). However, it cannot be ruled out that the internal constitutional aspect also affected their votes.

It must be remembered that this was a matter of urgency. Lives were at stake, but it is not clear whether the draft resolutions of, for example, the Soviet Union, Colombia and Uruguay were designed as a direct appeal to the Members concerned from the First Committee, or were to have been referred to the General Assembly, which would have been the only legal course of action. If, however, they were intended to have been direct appeals from the First Committee, it may well be that this internal constitutional flaw was responsible for their being voted incompetent. Unfortunately, however, these are matters of conjecture, for the matter was not made clear.

Even the fashion in which the question of competence was posed by the Chairman of the Committee is not conducive to clarity. With reference to the Soviet proposal he said that he would put to the vote the question of whether or not the Committee was incompetent to examine the draft resolution.<sup>2</sup> But

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1. *ibid*, para. 19.

2. *ibid*, para. 41.

with reference to the Paraguayan and Colombian proposals he put to the vote the question of the competence of the Committee to adopt them.<sup>1</sup> In putting the Uruguayan draft resolution to the test of competence the Chairman said that the Committee would vote on the question of competence 'with regard to' the Uruguayan draft.<sup>2</sup> With reference to the Ecuadorean draft resolution, the question put was whether the Committee was competent to take a vote thereon.<sup>3</sup>

It will be evident that these ways of presenting the question of competence to the Committee do not at all correspond. To ask if the Committee is competent to examine a proposal is to ask whether in fact it has the power to discuss the matter at all. On the other hand, to enquire if the Committee is competent to adopt a proposal assumes that it is competent to examine it, but that there still remains some doubt as to the legality of its adoption. To put to the vote the question of competence 'with regard to' a proposal is to ask for a vote on all aspects of the competence problem at once.

No doubt the Chairman was under the impression that he was putting the same question to the vote each time. Unfortunately, he was not and the results of these votes serve only to further complicate the issue.

The Committee voted that it was not competent to adopt the proposals of the Soviet Union,<sup>4</sup> Paraguay,<sup>5</sup> or Colombia,<sup>6</sup> and that it was incompetent with regard

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1. *ibid*, paras. 42 and 43 resp.

2. *ibid*, para. 44.

3. *ibid*, para. 61.

4. *ibid*, para. 41; 31 votes to 16, with 12 abstentions.

5. *ibid*, para. 42; 40 votes to 7, with 10 abstentions.

6. *ibid*, para. 43; 39 votes to 8, with 8 abstentions.

to that of Uruguay.<sup>1</sup> However, it held that it was competent to vote on the Ecuadorean proposal by 31 votes to 16, with 12 abstentions.<sup>2</sup>

The Committee having decided it was competent to vote on the Ecuadorean proposal, Ecuador introduced at the next meeting a revised version of its draft resolution which was as follows:<sup>3</sup>

The First Committee,  
Requests the President of the General Assembly to ascertain the views of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons, as long as the Conciliation Committee is in existence.

This resolution was adopted by 40 votes to 4 with 10 abstentions.<sup>4</sup>

(g) Conclusions.

For the reasons already indicated, it is difficult to draw any definite conclusions from the votes which took place on the question of competence. The Soviet proposal was addressed to Greek Government, whilst those of Colombia and Uruguay were addressed to any country which imposed the death penalty for such offences. The fact that in these draft resolutions the First Committee appears to address the Members directly may well have been the reason for the negative votes on competence.

Nevertheless, among those states which did rest their arguments regarding

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1. *ibid*, para. 44; 40 votes to 8, with 8 abstentions.

2. *ibid*, para. 61. The details of voting were as follows:  
In favour: Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Syria, Ukrainian S.S.R., U.S.S.R., Thailand, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Brazil, Byelorussian S.S.R., Cuba, Czechoslovakia, Dominican Republic, Ecuador, France, Guatemala, Honduras, Iceland, India, Iran, Israel.  
Against: Peru, U.K., Argentina, Belgium, Burma, Canada, Chile, China, Colombia, Denmark, Egypt, El Salvador, Ethiopia, Greece, Lebanon, Luxembourg,  
Abstaining: Pakistan, Saudi-Arabia, Sweden, Turkey, Union of South Africa, U.S.A., Australia, Bolivia, Costa Rica, Haiti, Iraq, Liberia.

3. *ibid*, 298th mtg., para. 2.

4. *ibid*, para. 13. No roll-call was requested.

competence on Article 2(7), rather on the internal constitutional problems, there was a tendency to say that some kind of resolution on the subject would have been competent, while others would not. There was evident again the same tendency to differentiate between different types of recommendations and to choose the one which because of its terms, did not seem to contravene the provisions of the Charter.

As in the previous phase of this matter, it will be noted however that the type of resolution which was finally adopted was one which did not address a formal appeal to the Greek Government, but left the matter in the hands of a United Nations official. It was left to informal talks and negotiations, there being a distinct aversion on the part of several States which were concerned to avoid any hint of intervention, to any direct approach to a Government regarding the conduct of its courts. This does suggest that such matters were felt by the majority to be within the domestic jurisdiction of States, thus prohibiting the United Nations from bringing direct pressure to bear on them to alter their conduct. Equally, however, this debate suggests that even where a matter is felt to be within the domestic jurisdiction of a Member, an offer of mediation or some other conciliatory move made informally through an officer of the United Nations does not amount to intervention therein.

(h) The Fourth Plenary Session.

At the plenary session, yet another attempt was made by the Soviet Union to have the United Nations address a direct appeal to the Greek Government to suspend various death sentences. At the 244th plenary meeting, Mr. Vyshinsky introduced the following resolution.<sup>1</sup>

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1. G.A., (IV), Plen., Annexes, a.i.21, p. 68, Doc.A/1080.

Taking note of the fact that the military courts of Greece are at the present time continuing to pass death sentences on members of the people's liberation movement and that on 13 October last the Athens military court sentenced to death eight prominent public figures, heroic fighters against the Hiterite invaders - Evangelia Saradzis, Dimitrios Mouratidis, Artemios Joanidis, Sotirios Barbounakis, Georgios Illopoulos, Jakavos Thamelis, Antonios Streklakos and Katherine Telahni (Zevgos), and that the Military Tribunal in Piraeus has sentenced to death Dr. Spiros Kritsitis,

The General Assembly requests the Greek Government to suspend the carrying out of the death sentences in regard to the above mentioned persons and to repeal these sentences.

In introducing this resolution, the Soviet delegate, Mr. Vyshinsky maintained that it did not amount to intervention in the domestic affairs of Greece. It was more, he claimed, a question of conscience and of the honour of the United Nations. It was an appeal to humanity, not an example of intervention.<sup>1</sup>

These views were not, however, shared by the United Kingdom, which maintained that the United Nations was not competent to deal with such a subject.<sup>2</sup>

As before, however, it was the middle course which won the day. The delegate of El Salvador pointed out that the powers of reprieve were vested in the Greek Government and could be exercised by it alone. In consequence, no pressure could be brought to bear on Greece as to how or when she should do so.

Nevertheless, while El Salvador was not prepared to ask the Greek Government to quash the sentences passed by its courts, it was willing to support a move whereby the Chairman and Vice-Chairman of the First Committee would be instructed to consult with the representatives of Greece, so that the latter could communicate to their Government the tenor of the discussions which had taken place in the

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1. *ibid*, Flen, 244th mtg., para. 135.

2. *ibid*, paras. 163-164.

United Nations and "so that the Greek Government itself, without any pressure on the part of the United Nations, might take the decision which was most appropriate and most consistent with justice".<sup>1</sup>

The Soviet Union withdrew its draft resolution, and the Ecuadorean delegation introduced a draft resolution requesting the President of the General Assembly to communicate with the Greek Government on the subject.<sup>2</sup> This draft resolution was in substance the same as that adopted by the First Committee and was adopted by the General Assembly.<sup>3</sup>

### 3. The Fifth Session.

So far, the general tendency had been to favour resolutions which placed on an officer of the United Nations, the Chairman of the First Committee, The President of the General Assembly or the Secretary General, the responsibility of making informal contact with the Greek Government in an effort to ensure commutation of the death sentences concerned. The prevailing opinion seemed to be that this would not violate Article 2(7) of the Charter. However at the fifth session of the General Assembly, a Soviet proposal to this effect was defeated.

The first item on the agenda of the First Committee at the fifth session was the problem of the independence of Korea but as soon as the proceedings of the Committee were opened, the Soviet delegate introduced a resolution concerning the death sentences passed by Greek courts and requested that this matter be dealt with first as it was a matter of urgency. The resolution was as follows:<sup>4</sup>

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1. *ibid*, 246th mtg., para. 23.

2. *ibid*, 268th mtg., para. 150.

3. *ibid*, para. 151.

4. G.A.,(V), 1st Com., Vol.I, 346th mtg., para. 11.



Taking note of the fact that the military courts in Greece are at the present time continuing to pass death sentences on members of the Greek trade unions and the people's liberation movement, the First Committee requests the President of the General Assembly to enter into negotiations with the representatives of the Greek Government concerning the repeal of the death sentences passed by the military courts on Greek patriots, including the eleven Greek patriots named in their mother's letter of 18 September last and the eight trade union officials named <sup>1</sup> in the memorandum of their relatives of 16 September last.

However, despite the alleged urgency of the matter, a Philippine proposal to give priority to the first item on the agenda, viz., the Korean independence question, was carried,<sup>2</sup> and consideration of the Soviet proposal was postponed till later.

The whole Greek question was taken up at the 392nd meeting. With particular reference to the death sentences and her own proposal on that subject, the Soviet delegate urged the Committee to take a humanitarian attitude.<sup>3</sup> Turkey, on the other hand, doubted the competence of the Committee to study the Soviet proposal as, in her opinion, it was incompatible with the principle of non-intervention.<sup>4</sup> Australia adopted a similar attitude and remarked that the Soviet views were inconsistent with the stand she had taken on a similar matter in Bulgaria, Hungary and Romania.<sup>5</sup>

Greece, having replied to the substance of the matter,<sup>6</sup> moved the immediate suspension of the debate and that a vote be taken on the Soviet

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1. The letters referred to are to be found in G.A.,(V), Annexes Vol. I, a.i.,22, p. 31, Doc.A/C.1/561.
  2. G.A.,(V), 1st Com., 346th mtg., para. 25.
  3. *ibid*, 393rd mtg., para. 14.
  4. *ibid*, para. 29.
  5. *ibid*, para. 31.
  6. *ibid*, paras. 17-26.

draft resolution.<sup>1</sup> The Greek motion was carried<sup>2</sup> and the Soviet proposal was defeated by 51 votes to 6, with 12 abstentions.<sup>3</sup>

No decision was taken on the competence of the Committee to adopt this draft resolution. Thus, it is not clear from this vote whether the First Committee had reversed its previous position and decided that it was not competent to adopt such a resolution, or whether it was merely of the opinion that the resolution was not opportune. It is suggested that the latter is a more likely conclusion.

#### 4. The Sixth Session.

During further discussions on the threats to the political independence and territorial integrity of Greece, the Soviet delegate again brought up the subject of death sentences passed on Greek nationals by Greek courts. Mr. Malik, the Soviet Representative, introduced the following draft resolutions:<sup>4</sup>

##### The Ad Hoc Political Committee,

Drawing attention to the fact that special military tribunals in Greece are still passing death sentences against the representatives of Greek democratic organizations and that the Athens Special Military Tribunal on 16 November 1951 passed death sentences against the following Greek patriots: Nikolaos Beloyannis, Elli Ioannidou, Stergios Grammenos, Dimitrios Kalopholias, Theodora Georgiadou, Aphrodite Maniati, Aphanasios Kanellopoulos, Dimitrios Kanellopoulos, Petros Papapikolaou, Evstaphios Dromazos, Calliope Papadopoulou and Liza Kottou.

Requests the President of the General Assembly to enter into negotiations with the representatives of the Government of Greece for the remission of the death sentences passed by the Athens Special Military Tribunal on 16 November 1951 against the said twelve convicted Greek patriots.

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1. para. 43.

2. *ibid*, para. 53.

3. *ibid*, para. 61. There was no roll-call.

4. G.A., (VI), Ad Hoc Pol.Com., 1st mtg., para. 43.

In presenting this draft resolution, Mr. Malik said that the U.S.S.R. delegation was motivated by high humanitarian principles and had due regard for the principle of non-intervention in the domestic affairs of Member States set forth in Article 2(7) of the Charter. He recalled that at its third and fourth sessions, the General Assembly had adopted a humanitarian approach towards a similar case and had passed resolutions which had prevented the execution of several Greek patriots. He recalled that matters both national and international in character affecting Greece had been discussed by the United Nations for several years. He went on to maintain that the Committee's consideration of the matter to which he had referred would not constitute interference in the domestic affairs of Greece, but would, on the contrary, be a humanitarian undertaking by the United Nations with a view to saving lives.<sup>1</sup>

This motion was not destined, however, to receive detailed treatment from the Ad Hoc Political Committee. The Chairman, Mr. Sarper of Turkey, stated that he would allow the representative of Greece to reply to the statement of the Soviet Union. However, he indicated that he was opposed to any discussion of this subject which was, in his opinion, irrelevant to the item on the agenda, and declared he would rule it out of order.<sup>2</sup>

A ruling from the Chair that discussion of this subject was out of order was upheld by the Committee by 32 votes to 5, with 16 abstentions.<sup>3</sup>

At the end of the fourth and for the whole of the fifth meetings of the Ad Hoc Political Committee, a discussion was held as to whether it was in order for the representative of Uruguay to introduce a draft resolution which

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1. *ibid*, para. 45.

2. *ibid*, para. 45.

3. *ibid*, para. 58.

requested the President of the General Assembly to use his good offices to dissuade the Greek Government from executing the sentence which had been pronounced. However, it was decided at the fifth meeting that the Uruguayan draft resolution was irrelevant to the subject under discussion and was therefore inadmissible.

#### 5. Conclusions.

The debates on the Greek question are not conducive to the formation of any definite opinion on the question of whether a recommendation to a State concerning its domestic affairs constitutes intervention, or, if some recommendations are permissible, on what type of recommendations are within the competence of the General Assembly and what types are not. The most that can be said is that there was exhibited a tendency to view with disfavour any formal recommendation to a State concerning the conduct of its courts but at the same time there existed, side by side, a general feeling that in humanitarian questions, the United Nations, and the General Assembly in particular, is not altogether powerless. However, such power as the General Assembly has in such matters would seem, from this case history, to be strictly limited. At most, it can make the feelings of its Members known to the State concerned, and this only in a round about manner.

This conclusion, indefinite though it is, is nevertheless of value for it shows yet again that even where there were such profound doubts as to the competence of the United Nations to deal with a particular subject, a majority of Members did not regard that as a reason to eschew all forms of action. Some action was felt to be competent even if the matter were held to be essentially within the domestic jurisdiction of Greece.

#### II. Spain.

At the sixth session of the General Assembly a similar attempt was made

by Poland to have adopted a resolution dealing with certain death sentences imposed by courts in Spain. However, little of any consequence can be extracted from the debate on this matter. Eventually the entire matter was bypassed by a procedural motion.

In the Third Committee, during a discussion on the draft International Covenant of Human Rights, the Polish representative introduced the following draft resolution:<sup>1</sup>

The Third Committee of the General Assembly,  
Concerned over violations of human rights in Spain;  
Noting that twenty-four inhabitants of Barcelona, among them Gregorio Lopez Raimundo, have been arraigned before a military court for participation in the Barcelona strike and that they are under threat of the death penalty,  
Requests the President of the General Assembly to take the necessary steps in order that the appropriate authorities in Spain take measures to ensure the cessation of the persecution of the above-mentioned twenty-four inhabitants of Barcelona and their immediate release.

Because of the urgency of this matter, the Polish representative, Mrs. Domonska, requested that this matter be dealt with first. Guatemala<sup>2</sup> and the U.S.S.R.<sup>3</sup> supported the Polish request.

The United States, on the other hand, maintained that the Polish proposal was entirely irrelevant to the subject under discussion. Mrs. Roosevelt then added that the Chairman of the Ad Hoc Political Committee had ruled that the Committee was not 'competent' to examine cases involving individuals and that in virtue of that decision, the Polish draft resolution was out of

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1. G.A., (VI), 3rd Com., 387th mtg., para. 10; Doc.A/C.5/L.203.

2. *ibid*, para. 12.

3. *ibid*, para. 14.

order.<sup>1</sup>

Argentina maintained that the Committee was incompetent to address objections to a State which was not a Member of the United Nations.<sup>2</sup> Denmark felt that the Polish proposal was irrelevant to the question at hand and that therefore the Committee was not 'competent' to consider it.<sup>3</sup> Haiti then proposed that the question of competence be settled by vote, a proposal later withdrawn.<sup>4</sup>

There was obvious a great deal of confusion in this debate and at the suggestion of Mexico consideration of the Polish draft resolution was postponed for 48 hours to allow time for more factual information to be obtained.<sup>5</sup>

When next this matter was taken up the Committee had before it also a motion in the names of Brazil, Colombia, Costa Rica, Honduras, the Netherlands, Nicaragua, Peru, U.K., U.S.A., and Venezuela to the effect that the substance of the draft Polish resolution being outwith the scope of the draft international covenant on human rights, a statement to that effect be placed by the Rapporteur in his report.<sup>6</sup>

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1. *ibid*, paras. 17-18; 57-58. It will be noted that Mrs. Roosevelt's Statement is somewhat confused. First, she did not cite the ruling of the Chairman mentioned, which makes it difficult to follow her line of argument. Secondly, no Chairman has power to rule that a Committee is incompetent to examine a matter. That is a question for the whole Committee to decide. But he does have power to rule a matter out of order, and this is doubtless what Mrs. Roosevelt was suggesting.
  2. *ibid*, para. 36.
  3. *ibid*, paras. 40-42. It will be evident that Denmark is also using the word 'competent' in a rather odd fashion here. If a matter is irrelevant, it is out of order for the Committee to consider it. The question of competence need not arise at all.
  4. *ibid*, paras. 45; 53.
  5. *ibid*, para. 61.
  6. Doc.A/C.3/L.220.

At this meeting,<sup>1</sup> the Chairman, Mrs. Ana Figueroa of Chile and the representative of Mexico spoke as though the Committee had to decide on its competence to entertain the Polish draft.<sup>2</sup> However, it was correctly pointed out by Mrs. Roosevelt that the procedural motion before them was designed to avoid a decision on the question of competence. What it called for was a decision on the relevance of the Polish resolution to the subject under discussion, the draft international covenant of human rights. In her opinion, the Polish resolution was not relevant and she pointed out that the Committee could not, on its own initiative, place new items on its agenda.<sup>3</sup> In this she was supported by Peru.<sup>4</sup> Poland, on the other hand, claimed that her resolution was relevant.<sup>5</sup> Nicaragua<sup>6</sup> claimed that the matter was irrelevant to the item on the agenda and at the same time constituted an intervention in Spain's domestic affairs, which latter view was shared by Argentina,<sup>7</sup> and Bolivia.<sup>8</sup> Ecuador,<sup>9</sup> the Dominican Republic<sup>10</sup> and France<sup>11</sup> each felt that the Polish

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1. 391st mtg.

2. *ibid*, para. 4.

3. *ibid*, paras. 6-10.

4. paras. 12-14.

5. para. 20.

6. *ibid*, paras. 22-23, a view not in keeping with her vote on the Ecuadorean draft at the 4th session; see *supra*, p. 241.

7. *ibid*, paras. 24-27.

8. *ibid*, para. 85.

9. 392nd mtg., paras. 65-67.

10. *ibid*, para. 68.

11. *ibid*, para. 69.

draft resolution was irrelevant to the matter under discussion.

Other States which spoke were prepared to support the Polish draft resolution for a variety of reasons. Afghanistan<sup>1</sup> gave it her support for humanitarian reasons. Haiti<sup>2</sup> said that though the matter of competence had not been formally raised, she thought that the Committee was competent because it was a matter of human rights. Mexico felt that the Polish resolution was purely humanitarian in aspect and declared her intention of supporting it.<sup>3</sup> Uruguay said that as it was a matter of human rights she considered it to be within the Committee's competence.<sup>4</sup> Israel<sup>5</sup> and Guatemala<sup>6</sup> both indicated their support for it on humanitarian grounds. Czechoslovakia felt that it was relevant to the agenda item.<sup>7</sup> In the opinion of the Soviet Union, the Polish draft did not imply any interference in the domestic affairs of Spain. It did not ask the General Assembly to intervene but, the Soviet delegate claimed, merely requested the President of the Assembly to find ways and means of using his influence.<sup>8</sup>

However, whether the Committee was competent to adopt such a resolution was not decided in this case, for the procedural motion declaring it to be outwith the scope of the agenda item was adopted by 28 votes to 13, with 13

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1. *ibid*, 391st mtg., paras. 28-31.

2. *ibid*, paras. 34-36. Yet it should not be overlooked that this same State had abstained in the vote on whether the Committee was competent to adopt the Ecuadorean resolution at the fourth session. Haiti's views on competence seem to be rather undecided.

3. *ibid*, 392nd mtg., para. 53.

4. *ibid*, para. 54.

5. *ibid*, paras. 58-59.

6. *ibid*, paras. 60-61.

7. *ibid*, paras. 62-64.

8. para. 72.



abstentions.<sup>1</sup>

This debate is not a source of great enlightenment on the attitude of States towards the question of intervention. The adoption of the procedural draft does not really demonstrate anything. It may well be that the majority of States did feel that the Polish draft was irrelevant to the item under discussion at the time it was presented. On the other hand, it may equally well be that they found in this a convenient method of disposing of an otherwise difficult item on which they were not anxious to take any position.

It should be noted however, that the treatment given to this Polish draft resolution was similar to that meted out to the Soviet resolution concerning the Greek sentences of death, presented to the Ad Hoc Political Committee at the same session which was also bypassed by means of the rules of procedure. It may be that this use of procedural rules to bypass the subject demonstrated a hardening of attitude on the part of States towards what they were prepared to accept without raising the cry of intervention. However, this is a matter of speculation which is unsupported by any evidence. All that does emerge from this example of a humanitarian appeal is continued uncertainty.

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1. *ibid*, para. 97.

## Chapter IX

### Post-Repertory Cases.

In the period since the last supplement of the Repertory was issued, four principal cases have been discussed in the General Assembly in which the question of domestic jurisdiction was raised, but none of them is particularly instructive concerning intervention. These cases were those concerning Tibet, Oman, Angola and Southern Rhodesia.

The Tibetan question was fundamentally one of human rights; the Omani question, one of aggression and colonialism; and those of Angola and Southern Rhodesia of colonialism and human rights. Thus each of these cases involved questions which are generally regarded as not essentially domestic any longer and hence the question of competence was not too important in any of them.

#### 1. The case of Tibet.

This matter was discussed at the fourteenth, fifteenth and sixteenth sessions and of course, in the substantive debates, the communist bloc resolutely adhered to the strict definition of intervention. The United Kingdom, France and Belgium tended to do likewise.<sup>1</sup> However, the United States continued to maintain that, in any case, discussion of a matter did not constitute intervention,<sup>2</sup> and Finland indicated her willingness to vote for a resolution of a general character which did not specifically refer to Tibet.<sup>3</sup>

#### 2. The Question of Oman.

This subject was discussed at the fifteenth, sixteenth and seventeenth

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1. United Kingdom: G.A., (XIV), Plen., 834th mtg., paras. 18-28; but cf. G.A., (XVI), Plen., Vol. III, 1085th mtg., paras. 95-97;  
France: G.A., (XIV), Plen., 832nd mtg., paras. 115-125; G.A., (XVI), Vol. III, 1085th mtg., paras. 98-101.  
Belgium: G.A., (XIV), Plen., 832nd mtg., paras. 42-47.

2. G.A., (XIV), Plen., 832nd mtg., paras. 80-94.

3. *ibid.*, 831st mtg., para. 63-66.

sessions. However, apart from British claims that the matter was domestic and hence could not be discussed,<sup>1</sup> there was little concern with the question of competence. Several States noted that there was a considerable doubt as to the exact status of this territory and on that ground indicated their intention to abstain from supporting any resolution on the subject.<sup>2</sup> Otherwise this subject affords little material that is of interest for present purposes.

3. and 4. The Questions of Angola and Southern Rhodesia.

As both these concerned a matter which has almost universally ceased to be regarded as within the domestic jurisdiction of the States concerned, the question of competence and hence of intervention was not discussed to any great extent. The Portuguese and British Governments maintained of course that the matters were domestic and that therefore the United Nations was not competent to deal with them.<sup>3</sup> However they were almost alone in this.

However, one interesting point of comparison does emerge from these two cases. The United Kingdom maintained that the United Nations was not competent to deal with the Southern Rhodesian matter, though it must be admitted that this has not prevented the British Government from co-operating to a considerable degree with the Special Committee on Colonialism regarding the matter. However, in the Angolan case, she adopted a somewhat more flexible approach. At the sixteenth session Sir Patrick Dean did say that he doubted the competence of the United Nations to intervene in the matter, but added that he would not go into

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1. G.A., (XVI), Sp. Pol. Com., 299th mtg., para. 2; *ibid*, 301st mtg., para. 7.
  2. *ibid*, 305th mtg., in particular, Greece, para. 12; Panama, para. 16; Mexico, paras. 18-21; Colombia, paras. 22-24; and Sierra Leone, paras. 25-26.
  3. Portugal: G.A., (XVI), Plen., Vol. III, 1088th mtg., para. 12; and *see* also the statement of the South African delegate, *ibid*, 1102nd mtg., para. 11;  
United Kingdom: G.A., (XVI), Vol. III, 1120th mtg., para. 25.

the legal aspects of the case. Then, in discussing the proposals before the Assembly he indicated that he opposed some as they were too near to intervention; others because they were unsuitable; but said that he could support some of them.

## Chapter X

### The Violation of Human Rights in the Union of Soviet Socialist Republics and the Question of West New Guinea.

The overall picture of the trend in the interpretation of intervention found in the practice of the General Assembly would not be complete without reference, albeit brief, to two cases where there was no attempt at all to differentiate between various types of recommendations. These two cases were the Violation of Human Rights in the Soviet Union and the Question of West New Guinea. In neither of these two cases was any attempt made to differentiate between various types of recommendations, characterizing some of them or certain provisions thereof as intervention but approving of others. In both of them States relied on the rigid approach to the question of competence, and as such the debates are not very informative. However, a brief summary of the case histories of each is included as they provide interesting points of comparison with the opinions evinced by certain Members of the United Nations in other circumstances.

#### 1. The violation of Human Rights in the Union of Soviet Socialist Republics.

This case was discussed only at the third session of the General Assembly and because of its legal overtones and the doubts which existed on the competence of the United Nations to deal with it, it was referred to the Sixth Committee.

From the debate in this Committee only two things emerge. First, the Soviet Union and her allies adhered strictly to the view that where a matter is within the domestic jurisdiction of a Member State, the United Nations is incompetent to deal with it in any way. Secondly, western States were not too keen to go into the legal merits of the case.

Despite the fact that the subject here involved concerned the 'right' of a married woman to leave her country of origin in order to join her husband -

which subject is explicitly dealt with in the Declaration of Human Rights - the Soviet Union, supported by its allies, maintained, inter alia, that the matter was within her own domestic jurisdiction.<sup>1</sup>

Despite Soviet objections, the General Assembly adopted a resolution recommending her to alter her legislation on the subject. The terms of this resolution were as follows:<sup>2</sup>

The General Assembly,

Considering the item proposed by Chile on 'violation by the Union of Soviet Socialist Republics, of fundamental human rights, traditional diplomatic practices and other principles of the Charter', which violation has consisted in preventing the Soviet wives of citizens of other nationalities from leaving their country with their husbands or in order to join them abroad, even when they are married to persons belonging to foreign diplomatic missions, or to members of their families or retinues,

Considering that in the preamble to the Charter of the United Nations all the signatory countries resolve 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women',

Considering that Article 1, paragraph 3, of the Charter binds all Members to encourage 'respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', and that in Article 55c of the Charter the Members undertook to 'promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion',

Considering that, finally, the Economic and Social Council, in pursuance of the powers conferred upon it by Article 62, paragraph 2, of the Charter, in its resolution 154 (VII)D, dated 23 August 1948, deplored the 'legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other' and that the Universal Declaration of Human Rights, formulated by the United Nations General Assembly in its Articles 13 and 16

1. For Soviet views see, G.A., (III/1), 6th Com., 135th mtg., p. 739; ibid, (III/2), Plen., 196th mtg., p. 153; Czechoslovakia, (III/1), 6th Com., 137th mtg., pp. 748-749; Poland, ibid, pp. 753-757; ibid, (III/2), Plen., 196th mtg., p. 149; Yugoslavia, ibid, (III/1), 6th Com., 138th mtg., pp. 760-761; Byelorussian S.S.R., ibid, p. 761; Ukrainian S.S.R., ibid, (III/2), Plen., 197th mtg., pp. 157-158.
2. G.A., (III/2), Plen., Annexes, a.i.7(42), Doc. A/787, p. 18, para. 6; and see also, G.A., (III/2), Plen., 197th mtg., p. 163.

provides that everyone has the right to leave any country including his own and that men and women of full age have the right to marry and without any limitation due to race and nationality or religion,

Declares that the measures which prevent or coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands or in order to join them abroad, are not in conformity with the Charter; and that when those measures refer to the wives of persons belonging to foreign diplomatic missions, or members of their families or retinue, they are contrary to courtesy, to diplomatic practices and to the principle of reciprocity, and are likely to impair the friendly relations among nations;

Recommends the Government of the Union of Soviet Socialist Republics to withdraw the measures of such a nature which have been adopted.

The question of competence in this case was somewhat complicated, for not only had the Members to decide to what extent the United Nations could address specific recommendations to a State concerning the observation of human rights inside its frontiers, but also whether international law had been broken, as Chile contended. Had international law been violated, then of course the question of competence would not have arisen. However, it is interesting to note that despite the fact that the issue of competence presented so many facets, none of the Western Powers, which were usually so opposed to intervention, dealt thoroughly with it. Nevertheless, they were able to vote in favour of a recommendation which issued specific directives to another Member State. This attitude contrasts strangely with that already seen above.

The statement made on behalf of the United Kingdom by Mr. Gerald Fitzmaurice is singularly lacking in legal analysis of the issues involved. He did not commit himself either on whether the law of diplomatic immunity had been broken or on the question of domestic jurisdiction. He said that if the case raised any legal question his Government would support a request for an advisory opinion from the International Court of Justice. However, he then added that he did not

propose to argue the legal merits of the action taken by the Soviet Government.<sup>1</sup>

Although Mr. Fitzmaurice said that the British Government would support a request to the International Court of Justice for an advisory opinion on any legal question arising out of the item, he opposed an Australian proposal<sup>2</sup> to submit to the Court the question of whether or not international law had been broken by the Soviet action. Speaking of this proposal, he said that he had no objections to it, but wondered whether it was really necessary. Even if the reply of the Court were that the Government of the Soviet Union had violated international law, he said, the principals in the case would still be in the Soviet Union. And if, on the contrary, the Court decided that the position of the Soviet Government was legally justified, the authorities of the Soviet Union would still be in the position of having violated fundamental human rights. He was doubtful therefore whether a request to the Court for an advisory opinion would contribute to the solution of the problem.<sup>3</sup> Later, in explaining his vote against the Australian proposal, he said that this proposal would serve no useful purpose as the complaint against the U.S.S.R. was not a legal matter but a question of human rights.<sup>4</sup>

It should be remembered, however, that while the United Kingdom did not have any difficulty in voting in favour of a recommendation which indicated to the Soviet Government specific measures which it had to take, in the case dealing with the treatment of people of Indian origin in the Union of South Africa, she opposed similar recommendations, though they too were concerned with questions of human

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1. G.A., (III/1), 6th Com., 135th mtg., pp. 731-733.

2. G.A., (III/1), 6th Com., Annexes, a.i.42, p. 56, Doc. A/C.6/316.

3. *ibid*, 6th Com. 137th mtg., p. 752.

4. *ibid*, 138th mtg., p. 781.



rights.

The delegation of the United States likewise did not deal too well with the legal issues involved, though it did at least commit itself to the view that questions of human rights are not within the domestic jurisdiction of States.<sup>1</sup>

The French delegation noted that there were both legal and practical aspects to this question, but unfortunately did not deal too well with the legal. The French delegate said that:<sup>2</sup>

If, therefore, the General Assembly were to have competence, either there must be an international agreement, or the situation must be such as to be likely to impair friendly relations among nations. Even if the first of those alternatives were not established, the recognition of the second would make it possible for the General Assembly to have competence in the matter.

The French delegation therefore considered the Chilean delegation's request to be admissible. The Assembly had the right to determine whether the nature of the situation to which the Chilean delegation had drawn attention was likely to impair relations between nations.

There is much merit to what the French delegate said here. However it should be noted that what he says regarding the right of the Assembly to determine the existence of a situation which is likely to impair the friendly relations among nations, relates more directly to the question of inclusion of the item on the agenda and the right to discuss it, rather than to the competence to adopt this specific recommendation. Furthermore, even allowing for the fact that such a situation did exist, French actions on this occasion contrast strangely with those taken in the debates on the item dealing

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1. *ibid*, 135th mtg., pp. 755-739.

2. *ibid*, 137th mtg., p. 750.

with the treatment of people of Indian origin in the Union of South Africa. In the present case France was able to vote in favour of a resolution which gave specific directions to the Soviet Government regarding her domestic legislation, and this without coming to a definite conclusion as to competence. On the other hand, in the case regarding the treatment of people of Indian origin in the Union of South Africa, even though a situation existed which had impaired the friendly relations among nations (as opposed to the present case where it was only possible that a situation existed which was likely to impair these relations) France objected strongly to any recommendation which issued such directives, and always insisted that any recommendation, because of the doubts on competence, had to be kept on a general plane. There is a strange ambivalence of opinion here.

It is, in fact, difficult in this case to avoid forming the impression that political considerations outweighed the legal.

## 2. The Question of West New Guinea (West Irian).

In 1949, the Netherlands and Indonesia had signed a 'Charter of Transfer of Sovereignty', which provided that 'The Kingdom of the Netherlands unconditionally and irrevocably transfers complete sovereignty over Indonesia to the Republic of the United States of Indonesia'. However, this Charter of Transfer of Sovereignty left in doubt the legal status of West New Guinea. Article 2 of the Charter of Transfer of Sovereignty stated that the status quo of the residency of New Guinea should be maintained, with the stipulation that within one year from the date of the transfer of sovereignty to the Republic of the United States of Indonesia, the question of the political status of New Guinea would be determined through negotiations between the two states.<sup>1</sup>

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1. For further details see Repertory, Suppl. No. 1, Vol. I, p. 44, paras. 70-72.

The negotiations which had been held as a result of this provision had been unfruitful and the question was brought to the attention of the ninth session of the General Assembly by the Indonesian delegation by a letter dated 17th August, 1954.

The question was fundamentally one of the legal status of West New Guinea, and whether the Charter of Transfer of Sovereignty had or had not transferred sovereignty over this portion of the Dutch East Indies to Indonesia or had left its status to be determined at a later date by negotiation.<sup>1</sup>

The First Committee adopted the following resolution:<sup>2</sup>

The General Assembly,

Having considered agenda item 61, 'The question of West Irian, (West New Guinea)',

Recalling that by agreements reached at the Hague in 1949 between Indonesia and the Netherlands a new relationship between the two countries, as sovereign independent States was established, but that it was not then possible to reconcile the views of the parties on West Irian (West New Guinea), which therefore remained in dispute,

Recalling the dedication of the parties to the principle of resolving by peaceful and reasonable means any differences that exist or arise between them,

Realizing that co-operation and friendship between them is the common desire of both parties,

1. Expresses the hope that the Governments of Indonesia and the Netherlands will pursue their endeavours in respect of the dispute that now exists between them to find a solution in conformity with the principles of the Charter of the United Nations;

2. Requests the parties to report progress to the tenth session of the General Assembly.

This resolution was adopted by 34 votes to 14, with 10

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1. See the statement of the problem by the Dutch delegate, G.A.,(IX), Plen., 509th mtg., paras. 93-120.
  2. G.A.,(IX), Annexes, a.i.,61, p. 4, Doc.A/C.1/L.110, sponsored jointly by the delegations of Argentina, Costa Rica, Cuba, Ecuador, El Salvador, India, Syria and Yugoslavia. This text was amended by Colombia; see *ibid*, p. 5, para. 6, Doc. A/2831.

abstentions.<sup>1</sup>

The debates which took place on this subject are not, however, very informative for present purposes. Several States, e.g. Australia<sup>2</sup>, Belgium<sup>3</sup>, the United Kingdom<sup>4</sup>, France<sup>5</sup>, Turkey<sup>6</sup>, and Luxembourg<sup>7</sup> took up the familiar stand that as the matter was within the domestic jurisdiction of the Netherlands, the United Nations was not competent to entertain it. Others, e.g., South Africa<sup>8</sup>, and Canada<sup>9</sup>, doubted the competence of the United Nations in the matter. None of these statements, however, contributed anything that had not already been said many times in the course of other debates.

This resolution was not adopted by the General Assembly as none of its parts

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1. *ibid*, 1st Com., 735th mtg., para. 102. The details of voting were as follows:  
In favour: Pakistan, Paraguay, Peru, Poland, Saudi-Arabia, Syria, Thailand, Ukrainian S.S.R., U.S.S.R., Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Bolivia, Burma, Byelorussian S.S.R., Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Honduras, India, Iran, Iraq, Lebanon, Liberia, Mexico.  
Against: Norway, Sweden, Turkey, Union of South Africa, U.K., Australia, Belgium, Colombia, Denmark, France, Iceland, Luxembourg, Netherlands, New Zealand.  
Abstentions: Philippines, U.S.A., Brazil, Canada, Chile, China, Dominican Republic, Indonesia, Israel, Nicaragua.
  2. *ibid*, 727th mtg., para. 5.
  3. *ibid*, para. 37.
  4. *ibid*, 728th mtg., para. 2.
  5. *ibid*, 731st mtg., para. 40.
  6. *ibid*, 736th mtg., para. 12.
  7. *ibid*, para. 22.
  8. *ibid*, 734th mtg., paras. 30-42.
  9. *ibid*, 735th mtg., para. 35.

received the required two-thirds majority.<sup>1</sup>

The States which voted against paragraph 1 of the operative part in the plenary session were:<sup>2</sup> Australia, Belgium, Brazil, Canada, Chile, China, Colombia, Denmark, Dominican Republic, France, Iceland, Israel, Luxembourg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Sweden, Turkey, Union of South Africa, United Kingdom. Guatemala, Haiti and the United States abstained.

Some of the States which cast negative votes did so because they considered that the adoption of this resolution would have amounted to deciding the legal issues in Indonesia's favour.<sup>3</sup> Others voted against it or abstained because of political doubts as to its wisdom.<sup>4</sup>

As the States which were concerned with the question of intervention in this case merely relied on the rigid non-technical definition, their statements are not prima facie, of great interest. Nevertheless they do, when compared with the other cases examined above, provide food for thought.

It has already been seen how, in several of the cases examined above, even the most ardent opponents of intervention in the domestic affairs of other nations have been prepared to vote in favour of mild recommendations which limited themselves to calling upon the State concerned to negotiate upon the matter in question. Essentially, this was all that the resolution before the

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1. ibid, Plen., 509th mtg., paras. 295-297.

2. ibid, para. 296.

3. See the statements of the Canadian delegation, ibid, para. 167; of the Dominican Republic, ibid, paras. 250-257; and of Norway, ibid, paras. 176-187.

4. See the statements of the delegations of Haiti, ibid, para. 144; Australia, ibid, paras. 145-151 though Australia also had doubts on the competence of the General Assembly to entertain the issue; and Chile, ibid, paras. 152-163.

General Assembly did and yet it failed to be adopted.

It may be that the failure of this recommendation to receive the required majority was due mainly to political reasons, although this remains a matter of conjecture. Nevertheless this case does compare rather oddly with the others examined in this study.<sup>1</sup>

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1. This matter was raised again at the tenth session - see G.A., (X), Annexes, a.i., 65, p. 1, Doc. A/2932. In the General Committee this request for inclusion was opposed by the Netherlands and France on the grounds of lack of competence - see *ibid*, Gen.Com., 104th mtg., paras. 15 and 45. The General Assembly however included it and no formal objections were made to this procedure - see *ibid*, Plen., 552nd mtg., para. 162. The matter was referred to the First Committee.

However, before the matter was taken up in the First Committee, it was announced that the Governments of the Netherlands and Indonesia had decided to hold a conference to discuss "certain problems concerning New Guinea, it being understood that with respect to its sovereignty each party maintained its own position". See G.A., (XI), Suppl. No. 1, A/5137, p. 50.

The matter was dealt with very briefly in the First Committee - in fact the discussion took up all of two short paragraphs. The First Committee limited itself to noting that the above agreements had been reached and expressed the hope that the negotiations referred to in the joint announcement would be fruitful; - see *ibid*, 1st Com., 811st mtg., paras. 65-66; for text of resolution, see *ibid*, Annexes, a.i.65, p. 4. It was stated in the First Committee that both the Netherlands and Indonesia had been informed of the text which had been submitted and that neither objected to it. It was adopted without objection. Similarly, the General Assembly adopted this text without objection, see *ibid*, Plen., 559th mtg., para. 117.

The question of the status of West New Guinea was not settled however until 1965 [See 10 U.N. Review, No. 5, p. 6 (1965); and also 9 U.N. Review, No. 9, pp. 1, 4-5, 39, (1962)] and in the meantime the United Nations was frequently called upon to consider the matter. However, it does not appear that in these subsequent debates the matter of domestic jurisdiction and intervention was raised. This is perhaps not surprising as the dispute between Indonesia and the Netherlands ended finally in open warfare.

## Chapter XI

### Conclusions - The General Assembly.

The practice of the General Assembly regarding the question of "the authority of the United Nations to 'intervene' within the meaning of Article 2(7) of the Charter", examined in the foregoing Chapters demonstrates the existence of a general though almost unacknowledged trend. Initially, at San Francisco, the intention was to debar the United Nations from discussing or adopting any recommendation concerning any domestic matter. This, however, was found to be a particularly difficult rule to follow and one which tended to circumscribe too closely the workings of the United Nations, and in particular, the General Assembly, not least because of the difficulty of deciding when a matter was no longer essentially within the domestic jurisdiction of a State. The majority of States which made pronouncements on this subject continually declared their support for the original intention, but then by degrees a different pattern of action began to take shape - almost unnoticed. States which stressed the importance of adhering to the letter of Article 2(7), as originally conceived, took part in debates on matters which they considered to fall within the domestic jurisdiction of some particular nation and began to vote for various kinds of mild resolutions which in some degree dealt with such matters. They began to tacitly accept that mere discussion of such matters was not an action to which exception should reasonably be taken. Even the most ardent opponents of the technical definition of intervention have done this. None of these States have, it must be admitted, come out into the open and formally altered their declared interpretation of Article 2(7). Furthermore, it must also be admitted that when it suits them, they quite easily revert to their rigid support for the broad or non-technical definition of intervention. But, if account is taken of their actions in these various

cases, if account is taken of their voting records in the matters examined in the foregoing chapters, it is submitted that a general tacit consensus will be found among the Members of the United Nations to the effect that mere discussion of and the adoption of certain kinds of recommendations by the General Assembly dealing with domestic affairs are not now prohibited by Article 2(7).

The types of recommendations which appear to have won general acceptance are ones which make a general appeal to States to reconsider some domestic policy in the light of the principles inscribed in the Charter or which call on such States to negotiate with an internal faction with which it is having trouble. Such recommendations, which confine themselves to expressing the general feelings of the vast majority of the Assembly and which are directed principally to finding a solution for some serious situation, albeit an internal one, have won a fairly general acceptance.

It must be admitted that this acceptance is, at the moment, only, as it were, on sufferance. There being no formal commitment to this effect, States are free to revert to their old rigid positions whenever they wish. This in itself is to be deprecated. What is perhaps worse, however, is that side by side with this tacit acceptance of a new definition of intervention, States still make a show of adhering to the old non-technical definition. On the one hand they continue to declare that because of Article 2(7) the General Assembly cannot deal in any way with a domestic matter, and on the other, they go ahead and vote for some kind of mild recommendation which does deal with such matters or with matters which they maintain are domestic. It is submitted that it would be to everyone's advantage if account were taken of the pattern of interpretation which has grown up and some agreement formally made not to consider any longer simple discussion and those types of recommendations as intervention in the domestic affairs of States.



Two questions remain to be considered before attention is turned to the practice of the Security Council on the question of intervention. One, is this development in the meaning of intervention vis à vis the General Assembly in keeping with the general structure of the United Nations and terms of the Charter? Two, is this development itself desirable?

In answer to question One, it is submitted that this development in the interpretation of the term 'intervene' in the practice of the General Assembly is in keeping with the general structure of the United Nations and the terms of the Charter, and that an agreement to interpret this term in this way in the future would not do fundamental violence to the terms of the Charter. To avoid repetition, however, the reasons for this submission are not discussed here, but in Chapter I, Volume III, "The Definition of Intervention in the Security Council".

In answer to question Two, it is submitted that this development in the General Assembly is not undesirable, provided it is properly controlled.

Despite the historical accuracy of the broad or non-technical interpretation of intervention which, it is submitted, cannot reasonably be doubted given the drafting history and actual wording and structure of the Charter, it seems in many respects to have become objectionable given the circumstances of the present day. It seems out of keeping with the mystique which has come to surround the United Nations as an entity. It seems to conflict with the place which the United Nations has come to hold in international society. It seems antithetical to the spirit which is the driving force behind much of the work of the United Nations.

The United Nations being an international organization with a written constitution, it is able to act in accordance only with the powers with which it has been endowed. But in the minds of men it has come to be something

more than this. It has come to be regarded as something more than a peace-keeping machine, though the importance of this function should not be denigrated in any way, for peace is the condition precedent upon which all else depends.

Today, it is fair to say that people have come to look to the United Nations to provide not only peace and security but also those conditions of stability and well-being of which Article 55 speaks. They have come to look to the United Nations for assistance in raising their standards of living, and in promoting economic and social progress. They have come to regard the United Nations as the champion of human rights and fundamental freedoms. In the period since its foundation the United Nations has come to be regarded as a universal organization, not only in respect of its projected membership but also of function.

The functions of the United Nations could broadly be said to be two - the maintenance of international peace and security and the promotion of social and economic progress and well-being. In effect, however, these two functions could be reduced simply to one of a paramount nature - the promotion of the well-being of the individual. So much of the Charter - if not all - is in effect devoted to this end. Chapters IX, X, XI, XII and XIII are directly concerned with the promotion of individual well-being. Even the Charter provisions dealing with international peace and security can be looked on as steps to this end, for international peace and security is not an end in itself, but rather something which is sought after because of the untold benefit it would bring to people.

This fact of international life, this paramount concern to ensure the steady improvement in the material and cultural well-being of the peoples of the world is surely symptomatic of a new attitude of mind in the world, a new

attitude which necessitates a change in the climate of legal thought which has heretofore governed the relations of States inter se. It is true that many nations would never have considered joining the United Nations if they had envisaged that it would, or could, become an omnipotent busybody, going round poking its nose into everybody's affairs. But given the facts of international life today, the conditions of interdependency which prevail even for the most powerful of nations, are States not bound to relax the strictures with which they have surrounded the United Nations? By signing the Charter are States not now, morally at least, under a duty to adopt a much more flexible attitude towards what they regard as intervention in their domestic affairs?

Technically, discussion of and a fortiori recommendations and studies concerning the domestic affairs of particular States do constitute intervention. No other conclusion is reasonably possible, given the terms of the Charter and the drafting history thereof. But in view of the changing world opinion on many subjects, the doubt which surrounds even the usefulness of the concept of domestic jurisdiction and the ever increasing interdependency of nations in almost all respects, can it not be said that irrespective of the nature of the subject matter involved the General Assembly, under the conditions which prevail today, ought to have the right, legal as well as moral, to discuss any matter brought before it, but to discuss it objectively, with a view to helping the State concerned to find a solution to its difficulties, a solution which is not only just but honourable to the State concerned? Sir Pierson Dickson, the United Kingdom representative, was technically correct when he said:<sup>1</sup>

Now, it has been suggested by some speakers in this debate that the stand which others have taken on Article 2, paragraph 7, of the Charter is legalistic. But that

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1. G.A., (X), Plen., 529th mtg., para. 158.

provision is in the law. This of course is not the first time in human history that the law has been dismissed as legalistic when it is found inconvenient. Both the letter and the spirit of the Charter require that each Member State should be left to manage its own affairs in its own territories. Should not that principle and provision appeal to every Member of this Organization?

The strength and exactitude of these statements should not be underestimated or denied. However, the question which we have to face is whether the world can continue to bow to and be governed by such technicalities? Given the fact that we cannot afford, nor should we wish, to enforce our views on our neighbours, should not the world organization through the General Assembly at least be able to discuss any problem, no matter how remote from a threat to world peace in the strict sense of that term, in order that it might be in a better position to lend whatever assistance it can to a State which, for whatever reason, finds itself in difficulties? M. Spaak of Belgium was technically correct when he said that the General Assembly had no right to discuss the question of Algeria just because blood was being spilled, or because it was of international concern. The merit of his remarks should not be overlooked. The present wording of the Charter does say that nothing in it shall authorize the United Nations to intervene etc. But the question which really has to be asked is: In view of the emergent nature of the United Nations as a world political organization to which the nations and the peoples of the world look more and more for the solution of their own and everybody else's problems, to what end should the functions of this body be devoted and directed? Should it be the principal concern of the Members of the United Nations to adhere to the unchanging letter of the Charter dedicated as it is in so many ways to the preservation of national sovereignty or should cognizance be taken of the emergent purpose of the Organization and a conscious effort made to revise certain aspects of its legal orientation?

It is submitted that the exigencies of present international life predicate

that the latter course be adopted. International life is now hardly possible on an isolationist basis. The peoples of each nation are becoming more and more interdependent and in such circumstances it seems rather out of date to limit the powers of the General Assembly by the 1945 ideas of intervention. It is submitted that present day conditions demand that nations formally revise their conception of what they consider as intervention by the General Assembly in their domestic affairs and openly accept that objective discussion of and recommendations concerning any subject mentioned in the Charter, albeit that for other legal purposes it remains essentially within their domestic jurisdiction, no longer constitute intervention. Discussions carried out and recommendations adopted principally with a view to assisting a State solve its problems should be permissible in this modern setting.

Of the practical reasons which lend support to the above proposal, one in particular stands out. Unless the General Assembly is in a position to discuss any topic, irrespective of its nature, and to adopt some kind of recommendation thereon, it will not be in a position to offer its good offices to a State which finds itself, for whatever reason, in difficulties. It will be unable to lend its assistance to such a State to help it in finding a just and honourable solution to the problem - unless of course the State concerned requests active United Nations help.

This is surely one of the strongest reasons why the General Assembly should be able to discuss any problem and adopt some kind of constructive resolution thereon and there seems to be no good reason why it should have to wait till its assistance is requested, possibly at the eleventh hour. An offer of good offices or mediation may provide the answer to a serious internal problem which fundamentally affects a State and which under the present Charter falls outwith the competence of the United Nations. If the General Assembly could, through an

offer of good offices, or otherwise contribute to the settlement of any dispute or situation, albeit that it is domestic in nature, it should be in a position to make such an offer. It cannot do this if it is unable to discuss a problem or make its feelings known through a resolution.

That the United Nations should be in a position to offer its good offices to any State which finds itself in difficulties has been adduced by some States as a reason for supporting the right of the General Assembly to discuss any subject mentioned in the Charter. Thus, during the tenth session of the General Assembly, during the debate on whether or not to include the Algerian Question in the agenda, the Indonesian representative said:<sup>1</sup>

.... The General Assembly is indeed the proper forum in which this dangerous international problem should be discussed. The General Assembly has an obligation not only to assist the people of Algeria to secure their inalienable rights, but it also has a duty towards France to assist it to find a just and peaceful solution to the question of Algeria in accordance with the principles and purposes of the Charter.

In conclusion, let me reiterate once again what it is that we are asking of the General Assembly. We are asking this body merely to show its proper concern over the dangerous situation prevailing in Algeria today. We are asking this Assembly merely to uphold the basic human rights enshrined in the Charter for all peoples everywhere. We are asking it, above all, to try at least to assuage the conflict in Algeria which has already cost the lives of thousands of innocent people and which threatens the maintenance of peace and security in that region of the world.

Similar views were expressed by the Lebanese delegate.<sup>2</sup> The Librarian delegate expressed his views thus:<sup>3</sup>

The delegation of Liberia holds the view that the inscription of the question of Algeria in the agenda of the present session would not be an intervention in the

1. G.A.,(X), Plen., 529th mtg., paras. 125-150; emphasis added.

2. *ibid.*, para. 181.

3. *ibid.*, 530th mtg., para. 106.

domestic jurisdiction of a State since such inscription would merely permit free and open discussion of the issues involved, and the most the United Nations could do would be to suggest the urgent necessity of finding an early solution in an amicable and satisfactory manner. Such a suggestion from the General Assembly, we submit, would in no way be an interference in a State's domestic jurisdiction. Rather it would be an expression of our concern to remove any tension among the peoples of that area which prove a threat to world peace.

The views of India were explained by Mr. Krishna Menon, who said:<sup>1</sup>

We are participating in this in order that a very difficult and unfortunate position in Algeria might be assisted to be solved. Those who disagree with us can question the wisdom of the course we are taking. They may even question the estimate and calculations which we make, but I should like to assure the French delegation that, so far as we are concerned, we do not approach this problem with disregard for the great traditions of France, or for the great contribution which it has made throughout the ages to human liberty, nor do we forget the great contribution which it has recently made in resolving the long period of imperial war in Indo-China and the sacrifices which it has made in order to sustain the cause of liberty. Therefore, if we do approach this problem, it is in the sense of trying to find peaceful solutions in order to bring a new element into the situation.

... If the words 'regardless of origin' have any meaning, it is that there is a general power to use the good offices of the Assembly for these purposes.

However, one important qualification to this suggested right of discussion and recommendation must be stressed. Any discussion of or recommendation concerning the domestic affairs of a particular State must indeed be free from all elements of coercion. Such discussion or recommendations must not seek to put pressure on the State concerned to adopt any particular course.

In this respect it is important to notice the objections voiced by the United States to the inclusion of the Algerian Question in the Assembly's

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1. *ibid*, para. 117 and 143.

agenda at the tenth session. Mr. Lodge noted that what was in fact sought by those who had requested the inclusion of this item on the agenda was 'the sanction of the General Assembly to a course of action intended to bring about fundamental changes in the composition of one of the United Nations' own Members - that is the French Republic'.<sup>1</sup> The United States believed that such a course of action brought the proposed item within the provisions of Article 2(7) and therefore voted against its inclusion in the agenda.

While the action of the United States in voting for the exclusion of this item from the definitive agenda is open to criticism, her reasons for doing so serve to illustrate the type of action which could not be sought as a result of a discussion of the domestic affairs of a particular State. Discussions and recommendations which had as their primary purpose the detachment of part of a State's territory, against that State's will, could not be regarded as legal and would still constitute intervention.

Such an approach to the question of intervention would, of course, necessitate a particular, as opposed to a general approach to the question of competence. It would entail differentiating between different kinds of discussions and recommendations in order to classify them as intervention or as legal expressions of concern. In retrospect, it is evident that it was just some such approach to the question of intervention which the delegates of Chile and Thailand adopted when they advocated the inclusion of the questions of race conflict in South Africa and of Algeria in the agenda of the General Assembly.

However, there seems to be no good reason why such a particular approach to the question of competence should not be adopted, formally. Admittedly, it would make the task of deciding whether or not a particular discussion or recommendation constituted intervention somewhat more difficult. However, this in itself is no reason for altogether eschewing a redefinition of the concept of intervention in United Nations law, vis & vis the General Assembly.

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1. G.A., (X), Plen., 530th mtg., paras.108-113.