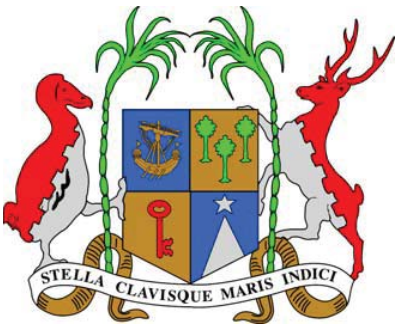
ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF MAURITIUS

v.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND



REPLY OF THE REPUBLIC OF MAURITIUS

VOLUME II

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18 November 2013

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Annex 7

Courts Ordinance, 1945

The Friendly Societies (Amendment) Ordinance, 1945.

Ordinance No. 4 of 1945

I assent,

DONALD M. KENNEDY,
Governor.

14th February, 1945.

An Ordinance further to amend Ordinance No. 22 of 1874

[14th February, 1945].

BE IT ENACTED by the Governor, with the advice and consent of the Council of Government, as follows—

Short title.

1. This Ordinance may be cited as the Friendly Societies (Amendment) Ordinance, 1945.

Art. 28A added to Ord. No. 22 of 1874.

2. The following Article shall be inserted in Ordinance No. 22 of 1874, as amended by the Friendly Societies (Amendment) Ordinance, 1938, immediately after Article 28—

Contribution payable by Friendly Societies.

28A.—(1) To meet the expenses incurred for the purposes of this Ordinance, every Friendly Society borne on the register of Friendly Societies shall pay to the Accountant General on or before the 15th day of March in every year such percentage of the revenue of the Society for the preceding year not exceeding one half per centum as shall be fixed by the Registrar :

Provided that no such contribution shall be payable by a Society whose revenue for the previous year does not exceed one thousand rupees (Rs. 1,000) :

Provided further that it shall be lawful for the Registrar to exempt any Society from the payment of such contribution if, in his opinion, undue hardship would result from such payment.

(2) Failure by any Friendly Society to pay the contribution for which it may be liable under this Article shall not give rise to any prosecution under Article 29, notwithstanding anything therein contained, but such contribution may be sued for and recovered as a small Crown debt under the provisions of Ordinance No. 16 of 1876 and of the Recovery of Small Crown Debts Ordinance, 1881.

The Courts Ordinance, 1945.

Ordinance No. 5 of 1945

in force as from 1/3/45

I assent,

DONALD M. KENNEDY,
Governor.

28th February, 1945.

An Ordinance to consolidate and amend the law relating to the Organisation and Jurisdiction of Courts of Law in Mauritius

[3rd March, 1945].

BE IT ENACTED by the Governor, with the advice and consent of the Council of Government, as follows—

PART I—PRELIMINARY

Short title.

1. This Ordinance may be cited as the Courts Ordinance, 1945.

Definitions.

2. In this Ordinance unless the context otherwise requires—

"Bench" means a Bench of three Magistrates.

"Chief Justice" means the Chief Justice of the Supreme Court of Mauritius.

"Curator" or "Curator-Accountant" means the Accountant in Bankruptcy and Curator of Vacant Estates.

"Judge" means any one of the Judges of the Supreme Court and includes the Chief Justice.

"Law Officer of the Crown" means the Procureur General or any of his Substitutes.

"Lesser Dependencies" means the islands of Diégo Garcia, Agaléga, Péros Banhos, Saint Brandon group, Salomon Islands, Six Islands, Trois Frères (including Danger Island and Eagle Island).

"Magistrate" means a District Magistrate appointed under the provisions of this Ordinance.

"Master" means the Master and Registrar of the Supreme Court.

"Registrar" means the Master and Registrar of the Supreme Court.

PART II—THE SUPREME COURT OF MAURITIUS

CHAPTER I

THE CONSTITUTION OF THE SUPREME COURT

Establishment of the Supreme Court of Mauritius.

3. His Majesty's Supreme Court of Judicature within the Island of Mauritius and its Dependencies shall be styled "The Supreme Court of the Colony of Mauritius and its Dependencies" (hereinafter referred to as the Supreme Court), and shall consist of the Chief Justice and so many Puisne Judges as the Governor may from time to time appoint by Letters Patent under the Seal of the Colony in accordance with such instructions as he may receive from His Majesty.

Precedence of Judges.

4. The Supreme Court shall be presided over by the Chief Justice for the time being, and the other Judges shall take precedence after him in the following order, namely—

(1) The Puisne Judges of the Supreme Court holding permanent appointments as Judges, according to the priority of their respective permanent appointments;

(2) Acting Puisne Judges, according to the priority of their respective acting appointments.

Constitution of the Supreme Court during vacancies.

5. The Supreme Court shall be deemed to be duly constituted during and notwithstanding any vacancy caused by the death, resignation, sickness, incapacity, or absence from the Colony on vacation leave, or for any other reason, of the Chief Justice or any Puisne Judge.

Vacancies and devolution of duties.

6. Whenever the office of the Chief Justice or any Puisne Judge shall become vacant by death or otherwise, it shall be lawful for the Governor to appoint another fit and proper person to fill such office until His Majesty's pleasure be known; and, in case of the illness or absence for any cause of any Puisne Judge, or whenever the Chief Justice or any Puisne Judge is temporarily officiating in some capacity other than that appertaining to his own substantive office, it shall be lawful for the Governor, in his discretion, to appoint a fit and proper person to fill the office of such Judge until he shall resume the duties thereof. Until any appointment be made under this section, the business of the Supreme Court shall devolve upon and be transacted as far as practicable by the remaining or continuing Puisne Judges; and the senior of them shall and may have and exercise all the powers and authorities vested in the Chief Justice.

Powers and jurisdiction of Judges.

7.—(1) All Judges of the Supreme Court shall have in all respects, save as is herein otherwise expressly provided, equal power, authority and jurisdiction.

Qualifications of Judges of Supreme Court.

(2) No person shall be eligible for appointment to the office of Judge of the Supreme Court, unless he be a barrister or advocate admitted to practice in one of the Superior Courts of the United Kingdom and of at least five years standing at the Bar.

Disqualifications of Judges.

(3) No Judge, so long as he holds office as such, shall do any other work or hold any other office, whether for or without remuneration, without the instructions or permission of the Governor.

Seal of the Supreme Court.

8.—(1) The Supreme Court shall have a seal bearing on it the Royal Arms with the words "The Supreme Court of Mauritius."

(2) The seal shall be kept by the Chief Justice. The Chief Justice may from time to time entrust the seal to such officers of the Court as he may think fit.

Sittings of Supreme Court.

9. Sittings of the Supreme Court may be appointed and holden at any time or times, whether in term or vacation, at the discretion of the Court.

Place of sittings of Supreme Court.

10. The sittings of the Supreme Court shall usually be held in such building as the Governor shall from time to time assign as a Court House for that purpose; but in case the Supreme Court shall sit in any other building or place for the transaction of legal business, the proceedings shall be as valid in every respect as if the same had been held in such Court House.

Adjournment of Court in Judge's absence.

11. In case the Judge before whom any case is to be heard shall from any cause be unable or fail to attend the same on the day appointed, and no other Judge shall attend in his stead, it shall be lawful for the Master to adjourn the Court *de die in diem* until the Judge attend or until the Court shall be adjourned or closed by order under the hand of a Judge.

Right of audience.

12. In any proceedings before the Supreme Court any of the following persons may address the Court—

(1) any party to the proceedings with leave of the Court;

(2) a barrister retained by or on behalf of any party.

Supreme Court open at all times for general business.

13. Subject to the provisions of section 15, the Supreme Court shall be open throughout the year for the transaction of the general legal business pending therein, other than the trial upon information of criminal causes, and may at any time hear and determine any cause or matter pending in Court other than the causes last aforesaid, upon such notice to the parties and otherwise as shall be determined by Rules of Court or as shall seem just and reasonable:

Provided further that the offices of the Supreme Court shall remain open for public business during office hours throughout the vacation and that the vacation shall only apply to the officers of the Supreme Court in so far as is provided by Rules of Court.

Language to be used in Supreme Court.

14. The official language to be used in the Supreme Court of Mauritius shall be English. Provided that in any case where any person appearing before the Court satisfies the Court that he does not possess a competent knowledge of the English language he may give his evidence or make any statement in the language with which he is best acquainted.

CHAPTER II

THE JURISDICTION OF THE SUPREME COURT

Supreme Court to have the powers of the Court of the King's Bench in England.

15. The Supreme Court shall be a Superior Court of Record, and in addition to any other jurisdiction conferred by this or any other Ordinance, shall possess and exercise all the powers, authority, and jurisdiction that are possessed and exercised by His Majesty's Court of King's Bench in England :

Provided that the Admiralty jurisdiction and authority of the Supreme Court shall be exercised in virtue and in pursuance of the provisions of the Colonial Courts of Admiralty Act, 1890 ; and the Supreme Court when exercising such jurisdiction shall be called the Colonial Court of Admiralty.

Supreme Court to be a Court of Equity.

16. The Supreme Court shall be a Court of Equity invested with power, authority and jurisdiction to administer justice, and to do all acts for the due execution of such equitable jurisdiction, in all cases where no legal remedy is provided by the written law of Mauritius.

Jurisdiction and mode of proceeding of the Supreme Court.

17. The Supreme Court shall have full original jurisdiction to hear, conduct and pass decisions in civil suits, actions, causes, and any matters that may be brought and may be pending before the Supreme Court, and the Supreme Court and the Judges thereof, shall sit, and proceed to and conduct, and carry on, business in the same manner as the Court of King's Bench and the Judges thereof.

Disciplinary powers of the Supreme Court.

18. The Supreme Court shall have full power and jurisdiction to hear and determine any case of a disciplinary nature brought by way of motion before the Supreme Court by any law officer of the Crown in respect to the professional conduct of any barrister, solicitor, notary public or any ministerial officer.

CHAPTER III

OFFICERS OF THE SUPREME COURT

Master and Registrar of the Supreme Court.

19. The Supreme Court shall have an officer to be styled the Master and Registrar of the Supreme Court, who shall be a barrister of at least five years standing, whose duty it shall be to tax costs, conduct and manage judicial sales, assemblies of relatives, probate of wills and the matters connected therewith, interdictions and local examinations, and who shall deal with matters of audit, enquiry, and accounts, and generally, all such matters as may be referred to him by the Chief Justice or the Judges of the Supreme Court.

Governor may appoint substitutes to the Master.

20. The Governor may appoint any person being a magistrate, or a barrister-at-law or advocate admitted to practice in the Colony, to perform the duties of Master and Registrar, in case of absence or other incapacity to act of the Master and Registrar of the Supreme Court. Such person shall be styled the Substitute Master and Registrar of the Supreme Court and shall take before entering on his duties the same oaths as the Master and Registrar of the Supreme Court.

Chief Justice may authorize taxation by Chief Clerk.

21.—(1) The Chief Justice may, in case of absence of the Master and Registrar of the Supreme Court, make an order directing and authorizing the Chief Clerk of the Registry to tax costs during the absence of the Registrar.

(2) The Chief Clerk of the Registry shall thereupon have, during the absence of the Master, the same power of taxing costs as is vested in the Master by this Ordinance ; and any taxation of costs by the Chief Clerk as aforesaid shall be deemed a taxation by the Master and Registrar.

Family councils.

22. Family councils relating to the sale of immovable property belonging to minors shall only be held before the Master of the Supreme Court, and may be convened by the said Master upon an application made directly to him.

Minutes of proceedings before the Supreme Court.

23. In every case, civil or criminal, tried before the Supreme Court, or any Division thereof, minutes of proceedings shall be drawn up and shall be signed by the Registrar, or by any other officer of the Court acting on behalf of the Registrar with the authority of the Chief Justice. These minutes, with the notes of evidence taken at the hearing or trial, as required by section 177 shall be preserved as records of the Court. The said minutes and notes of evidence, or a copy thereof purporting to be signed and certified as a true copy by the Registrar, or such other officer, shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses.

Shorthand notes of proceedings in civil and criminal cases.

24. In every case, civil or criminal, when the Presiding Judge may so direct, the Registrar or such other officer shall ensure that shorthand notes are taken of any proceedings before the Supreme Court, and a transcript of such notes shall be made if the Presiding Judge so directs, and such transcript shall, for all purposes, be deemed *prima facie* to be the official record of such proceedings.

Curator-Accountant.

25.—(1) The Governor may appoint one and the same officer to be Accountant in Bankruptcy and Curator of Vacant Estates.

(2) Such officer shall be attached to the Supreme Court and shall be styled the Curator-Accountant and shall be subject to all the provisions of the Bankruptcy laws for the time being in force relative to the office of Accountant in Bankruptcy and to all the provisions of the Curatelle laws relative to the office of Curator of Vacant Estates.

(3) The Curator-Accountant shall furnish such security as may be fixed by the Governor.

(4) Whenever the Curator-Accountant shall be absent temporarily, on leave, or through illness, or otherwise, the Chief Justice may, if the Governor has not made a provisional appointment

appoint another officer of the Supreme Court to discharge during the time of such absence the duties of the Curator-Accountant, who shall, if so required by the Chief Justice, give such security as may be determined by the Chief Justice.

(5) There shall be attached to the Curator-Accountant's office such number of clerks as shall be determined by the Governor and who shall perform such duties as shall be assigned to them by the Curator-Accountant.

Extension to the Dependencies.

26.—(1) The provisions of any enactment relating to the Curatelle shall extend to the Dependencies and the Lesser Dependencies; and the Curator may, with the approval of the Chief Justice, appoint a proper person to be his delegate in any such Dependencies and to take possession of and administer under his directions any vacant estates there.

(2) The Curator shall have with regard to any vacant estates in such Dependencies the same powers and duties as in Mauritius.

Curator to take charge of vacant estates and rights of absentees.

27. It shall be the duty of the Curator to take charge of and administer any vacant estate, to take charge of and administer the property of absentees and to represent absentees, and generally to perform and discharge such other functions and duties as may devolve upon him by virtue of any enactment for the time being in force governing the administration of vacant estates and the property and representation of absentees.

When actions allowed against Curator as representing absentees.

28. Whenever the Curator is vested with any property or right belonging or accruing to an absentee, and an action is brought against the Curator as representing such absentee, it shall be lawful for the Curator before entering an appearance to apply by way of summons to the Court or Judge for a stay of proceedings to enable him to communicate with the absentee. The Court or Judge in making an order on the said application shall have regard to the times specified by the law for the time being in force, to the nature and circumstances of the case, and to the nature of the process which has been served upon the Curator:

Provided that when the Curator is vested with the estate of an absentee, it shall not be lawful for him to be made a defendant in any action of tort (*délit* or *quasi délit*) committed before the date of the vesting order for which the absentee is liable, as representing such absentee:

Provided further that the Curator shall not be made a defendant in an action with respect to a right existing or alleged to exist in an absentee when the estate or alleged estate of the absentee consists solely of such right.

Government not liable to costs in any action against Curator.

29. In no action against the Curator shall the Government be liable to pay the costs of such action.

Ushers.

30.—(1) The Governor may, on the recommendation of the Chief Justice, appoint as many persons as may be needed to be ushers of the Supreme Court to perform such duties in Court as may be required of them and to serve and execute all such summonses, orders, writs and warrants of the Court and any extra judicial process as they may be required to serve or execute.

(2) Every usher shall, on his appointment, furnish a security of such nature and amount as the Governor may require.

Appointment of interpreters and translation of proceedings in Court.

31.—(1) It shall be lawful for the Governor to appoint such number of persons as may be necessary possessing a competent knowledge of the Chinese, Hindi, Hindustani, Gujarati, Tamil, or Telegu languages, whose duty it shall be to interpret where necessary the oral proceedings before the Supreme Court into English and to translate any documents submitted to the Court or forming part of the record of any case from any such language into English.

(2) All interpreters appointed by the Governor shall be subject, as officers of the Court, to the control of the Chief Justice and shall be responsible to him; and they shall perform their duties in accordance with Rules of Court.

Other officers of the Court.

32.—(1) The Supreme Court shall have such other officers as may be appointed by the Governor on the recommandation of the Chief Justice.

(2) It shall be lawful for the Governor to appoint such number of persons as may be necessary to be shorthand writers of the Supreme Court and to fix their pay and the terms of their appointment.

(3) Save as expressly provided by this or any other enactment for the time being in force all officers of the Supreme Court shall, for the purposes of discipline, be subject to all regulations applicable to the Service of the Colony.

Officers of Court subject to control of Chief Justice

33. Without prejudice to the powers of the Governor, every officer of the Supreme Court, including clerks, shall, for all purposes, be subject to the orders and directions of the Chief Justice.

CHAPTER IV

SITTINGS AND DISTRIBUTION OF BUSINESS OF THE SUPREME COURT

(i) Civil Jurisdiction

Civil jurisdiction of Supreme Court.

34.—(1) The Supreme Court shall be the principal Court of original civil jurisdiction and shall exercise general powers of supervision over all District and Industrial Courts and other special Courts established or which may be established in the Colony.

Divisional Courts in civil suits.

(2) In the exercise of civil jurisdiction, the Supreme Court may hear and determine all civil matters whether sitting as a Court of Appeal or in exercise of its original jurisdiction, and it shall be lawful for the Supreme Court to sit publicly in more than one division at the same time for the despatch of civil business; each such division may be composed of one or more Judges as the nature of the suit or matter may require.

Certain cases may be heard before one Judge.

35. Civil suits, demands and matters wherein the subject in litigation or the principal cause of action exclusive of interest and costs does not exceed in value three thousand rupees (Rs. 3,000); actions in divorce or judicial separation; and motions and rules returnable may, in the discretion of the Judges, be heard before one Judge, who shall have full power to take cognizance of and determine the same:

Provided that whenever any question shall arise for adjudication in any case coming before a single Judge of the Supreme Court which shall appear to such Judge to be a question of doubt or difficulty, it shall be lawful for such Judge to reserve such question for the decision of the full Court.

Quorum of two Judges in certain cases.

36. All other civil suits or matters brought before the Supreme Court which are required by law to be decided by the Court shall be heard and determined, and all evidence in connection therewith shall be heard, by at least two Judges at public sittings.

Difference of opinion between two Judges.

37. When the Supreme Court or any divisional Court thereof shall be held by two Judges only, the unanimous decision of the said Judges shall be taken to be the decision of the Supreme Court; and in the event of any difference of opinion between them, the decision of the Court shall be suspended until a third judge shall be present, and the unanimous decision or the decision of the majority of such three judges, shall be taken to be the decision of the Supreme Court.

(ii) Criminal Jurisdiction—Court of Assizes

Assizes for the despatch of criminal business.

38. The Supreme Court shall be the principal Court of original criminal jurisdiction and shall exercise general powers of supervision over all District and Industrial Courts and other Special Courts established or which may be established in the Colony. The Supreme Court shall hold sessions for the despatch of criminal business, (hereafter called the Assizes) which shall be held in Port Louis or in such other part of the Colony of Mauritius as the Chief Justice may direct, four times in each year, namely: once every three months from the first day of January, or oftener if found necessary; and such Court shall continue to sit from day to day until the business incident to its session is disposed of,

and may adjourn from time to time as may be necessary. It shall be holden by and before any one of the Judges of the Supreme Court:

Provided that a special session may be ordered at any time by the Chief Justice:

Provided further that offences committed under Articles 156, 283 and 284 of the Penal Code may be prosecuted at the discretion of the Procureur General before the Supreme Court without a jury, on an information signed by the Procureur General and filed before the Supreme Court.

Cases before three Judges

39. In any case reserved at the Assizes, or pending before the Supreme Court, which the law requires to be taken before the full Court, three Judges thereof shall hear the case; and in such case, as well as in any case where the Judges of the Supreme Court may deem it expedient to hold a sitting before three of them, the unanimous decision of such three Judges, or the decision of a majority thereof, shall be taken to be the decision of the full Court.

Criminal and civil sittings.

40. The Supreme Court shall have power to hold two or more sittings at the same time for the despatch of criminal business, and to hold such Assizes at the same time as a sitting for the despatch of civil business. At such Assizes, all criminal cases shall as far as practicable be tried and determined in priority to any other business.

Gaol delivery.

41.—(1) All persons committed for trial shall be committed for trial at the next Assizes to be held.

(2) Any trial may be postponed if such postponement appear expedient for the interests of justice.

(iii) Trial by Jury

Jury for the trial of criminal and civil cases before the Supreme Court.

42.—(1) There shall be a jury for the trial of criminal and civil cases before the Supreme Court.

(2) Criminal trials before the Court of Assizes shall be holden by and before one or more Judges of the Supreme Court and for the trial of matters of fact there shall be a jury consisting of nine men qualified as hereinafter provided.

(3) There shall be a similar jury consisting of seven persons of similar purposes in all civil actions before the said Supreme Court, wherein the Court shall have awarded a trial by jury, either on the application of the parties or on its own determination.

Penalty in case of non-attendance by jury when duly summoned.

43. Any person who, when duly summoned as a juror, shall make default and fail to attend the said Court, or when called, shall not answer or shall wilfully withdraw himself from the presence of the Court before the jury, of which he is one, shall have delivered their verdict or have been discharged, shall forfeit a sum not exceeding five hundred rupees (Rs. 500), at the direction of the Judge, unless some just cause for such defaulter's absence shall be made to appear to the satisfaction of the said Court.

Drawing of jurors to serve.

44. At the sitting of the Court for the trial of any such issue, the name, condition and place of abode of each juror summoned as aforesaid, shall be written on a separate piece of card, paper, parchment, or otherwise and put into a box, and when such issue is called on to be tried, the Registrar or other officer of the Court shall, in open Court, draw therefrom, until the names of nine men or seven as the case may require, appear who are not objected to or challenged; and after the trial, such names shall be returned to the box, to be kept with the other undrawn names, and so on as long as any issue shall remain to be tried.

Should an insufficient number of jurors be present, persons to be summoned from among the bystanders.

45. Where a case appointed to be tried by a jury shall be called on, and a sufficient number of jurors summoned to attend such Court shall not be in attendance, the Court or Judge may then order any officer of the Court forthwith to summon as many good and lawful men of the bystanders, (being qualified as jurors), or any such jurors residing in Port Louis, as shall be sufficient to make up a full jury for the trial of such case aforesaid.

Challenges of jurors.

46. The following challenges shall be allowed and no other—

In criminal cases the Crown Prosecutor in the first place and the prisoner shall have each seven peremptory challenges,—in criminal and civil trials the number of challenges for cause shall be unlimited, but the truth and justice of each of such challenge for cause shall be decided on by the Court, and the challenge allowed or disallowed accordingly.

Oaths to be taken by jurors.

47.—(1) In criminal cases, when the prisoner has been placed at the bar, each juryman shall take the following oath:

"You shall well and truly try the matter at issue between our Sovereign Lord the King and the prisoner at the bar, and a true verdict give according to the evidence. So help you God".

(2) In civil cases the oath shall be as follows—

"You shall well and truly try the issue joined between the parties in this cause and a true verdict give according to the evidence. So help you God!".

Such oaths shall be administered by the Registrar or other officer of the Court in presence of the Court.

Foreman to be elected by jury.

48. After the oaths have been administered, the jury shall elect their foreman.

Giving the accused in charge.

49. The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of the Court shall inform them of the charge set forth in the information, and of their duty as jurors upon the trial.

The presiding judge to sum up the case to the jury on the evidence being closed.

50. The evidence and arguments at the trial on both sides being closed, the presiding judge shall, in the presence of the parties, sum up the whole case to the jury, stating where the main question and principal issue lies, commenting on the evidence, and affording such explanations and making such remarks as he may think necessary, for their direction, further stating his opinion on any matter of law arising on the evidence which he may consider to require it.

Verdict.

51. The verdict of the jury in criminal matters shall be in ordinary cases "Guilty" or "Not Guilty" but the jury may, if they desire it in any particular case, return instead a special verdict, setting out the facts which they find to have existed in the case before them, with an alternative conclusion of "Guilty" or "Not Guilty" according as the Court may determine the matter of law arising from the facts so found.

Verdict to be given by a majority.

52. The verdict of the jury must be given by a majority of seven in criminal cases and by a majority of five in civil cases. It shall be delivered in open Court and shall be recorded by the Registrar or other officer of the Court.

Sentence to be pronounced by the Court

53. After such Registrar or other officer shall have recorded the verdict in criminal matters, the Court shall pronounce sentence on the prisoner either forthwith or on some future day.

Penalty in case of communication between a juryman and any other person in Court.

54. Any juryman who shall be guilty of any extraneous communication pending the conference of the jury, shall be fined by the Court in a sum not exceeding five hundred rupees (Rs. 500). The same penalty shall apply to any person guilty of having, from without, held any communication with any juryman and to the officer in charge of the jury who shall not have prevented such communication.

Penalty in case of bribes offered to or accepted by a juror.

55. Every person who shall be guilty of the offence of attempting corruptly to influence a jury by persuasion or by bribery or by offer of bribery, and every juror who shall wilfully and corruptly consent thereto, shall be respectively punished by imprisonment not exceeding two years, either in a summary

manner by a Court of Assizes, should the commission of the offence be discovered pending the session of the said Court, or by the Court of Assizes on a criminal information filed, or by the Procureur General against the offender should the commission of the offence not be discovered during such session.

Law of England to be followed to decide any question of procedure.

56. When any question may arise as to any procedure, or conduct in or respecting any matter, in the trial by jury, not herein provided for, the law of England shall be followed and rule the point or question at issue.

Persons ignorant of English not required to serve as jurymen.

57. No person who shall have made an oath or affirmation that he is not sufficiently acquainted with the English language to serve as a juryman shall be called upon to act as a juror in any criminal or civil case, nor shall the name of any such person be inserted by the Registrar of the Supreme Court in the Jury Book compiled by him, so long as such person shall continue not to be sufficiently conversant with the English language to serve as a juryman:

Provided that any Judge of the Supreme Court in Chambers may, ex officio, direct the Registrar of the said Court to re-insert, and it shall also be competent for the said Registrar, ex-officio, to re-insert in the Jury List of any year, the name of any person aforesaid, who, there shall be reason to believe, has become sufficiently conversant with the English language to serve as a juror.

Illness of accused.

58. If during a trial the accused, in the opinion of the Court becomes incapable, through sickness or other sufficient cause, of remaining at the bar, the Court may discharge the jury and adjourn the trial.

In absence of a juror trial may be postponed, or fresh jury called.

59. If in the course of a trial, at any time prior to the delivery of the verdict, any juror from any sufficient cause is prevented from attending through the trial, or from further attendance at the time, or if any juror absent himself, and his further attendance cannot be immediately enforced, the Court may postpone the trial till the juror can attend, if within a reasonable time; or, if the attendance of such juror cannot be procured within a reasonable time, the Court may direct that a juror shall be added, and the jury re-sworn, or that the jury shall be discharged, and a new jury empanelled, and in either of the latter cases the trial shall commence anew.

When jury to be kept together.

60.—(1) It shall not be necessary in any case to keep the jury together during any adjournment previous to the close of the judge's summing up; but it shall be lawful for the Court, if it should appear to it to be advisable in the interests of justice in any trial, to require the jury to be kept together during any adjournment.

(2) When the jury have retired to consider their verdict the Court may give such direction as it may think fit with respect to their accommodation, custody and refreshment.

Jurors to attend adjournments.

61. If a trial is adjourned, the jurors shall be required to attend at the adjournment sitting and at every subsequent sitting until the conclusion of the trial.

(iv) Jurisdiction in Bankruptcy

Bankruptcy Division of Supreme Court.

62.—(1) There shall be a division of the Supreme Court to be called the Bankruptcy Division of the Supreme Court, having jurisdiction to deal with all matters of bankruptcy, insolvency or the winding up of companies.

(2) The jurisdiction of the Bankruptcy Division of the Supreme Court shall vest in and be exercised by the Master and Registrar of the Supreme Court concurrently with the Judges of the Supreme Court.

(3) The jurisdiction of the Master and Registrar of the Supreme Court when sitting as a judge of the Bankruptcy Division shall not extend to the trial of criminal offences against the law of bankruptcy, insolvency or the winding up of companies for the time being in force.

(4) The Master and Registrar when acting in the Bankruptcy Division shall have all the powers and privileges of the Judges of the Supreme Court.

(5) The Substitute Master and Registrar shall not exercise any jurisdiction in bankruptcy, insolvency or the winding up of companies.

(6) Several sittings of the Bankruptcy Division may be held concurrently for the despatch of business.

Interpretation.

63. Wheresoever in any enactment in force in the Colony dealing with bankruptcy and insolvency, the expressions "Master," "Court," "Judge" or "Judge in Bankruptcy," are used, they shall be construed to mean the Master and Registrar of the Supreme Court sitting as a judge of the Bankruptcy Division of the Supreme Court, or a Judge of the Supreme Court exercising jurisdiction in the Bankruptcy Division of the Supreme Court; and any jurisdiction exercisable under any such enactment by the Master or Registrar in Chambers shall be exercised by a Judge of the Supreme Court in Chambers.

(2) Wheresoever in any enactment in force in the Colony dealing with bankruptcy or insolvency the words "Bankruptcy Court" or "Court" are used, they shall be construed to mean the Bankruptcy Division of the Supreme Court.

Custody of records.

64. All records and other documents in matters relating to insolvency, bankruptcy and winding-up of Companies shall be kept in the Registry of the Supreme Court.

Registrar of the Bankruptcy Division.

65. The Chief Clerk and such other clerk of the Registry of the Supreme Court as the Chief Justice may from time to time appoint by order in writing, shall act as Registrar of the Bankruptcy Division, and all warrants, orders or proceedings issued by that Division shall be under the seal of the Supreme Court and under the hand of the officer so acting as Registrar.

Registrar may tax costs.

66. The powers as Registrar of the Bankruptcy Division of the Chief Clerk or of any other clerk or clerks of the Registry, shall include that of taxing costs and of doing any other act, or issuing any order appertaining to the function of Registrar in Bankruptcy, or which it would be the duty of the Master and Registrar to do or to issue in his capacity of Registrar.

Power to make rules.

67. The Judges of the Supreme Court may make rules regulating the procedure in insolvency, bankruptcy, and winding-up and specifying the fees and costs to be taken and allowed in Court and at Chambers, and for the distribution of business in the Bankruptcy Division.

(v) Power of Court or Judge to require attendance of Ministère Public.

Attendance of Ministère Public before the Supreme Court.

68. Whenever the Court or any Judge certifies by writing that the attendance in Court of any Law Officer of the Crown, as representing the Ministère Public, is essential to the proper administration of justice in any case—

(*a*) where the Crown or the Public Revenue is concerned ;

(*b*) where the civil status of any person, or the guardianship of any minor or interdicted person is concerned,

it shall be lawful for the Procureur General or any member of the Parquet duly authorised by him to appear as a party to the case and give his conclusion thereon :

Provided that it shall be lawful for the Ministère Public either at the request of the Court, or *proprio motu*, to intervene at any stage of any matrimonial case before divorce or judicial separation is actually pronounced and to take cognizance of all necessary papers in the matter and to argue before the Court any question in relation to such matter, and which the Court may deem it necessary or expedient to have fully argued, or to move the Court to stay proceedings in order that evidence be produced by the Crown to show either collusion or fraud or that the plaintiff has, by his own offence or conduct, estopped himself from claiming the privilege of the law.

CHAPTER V

THE APPELLATE JURISDICTION OF THE SUPREME COURT

Appellate jurisdiction of the Supreme Court.

69. Subject to the provisions of any Ordinance or any other enactment for the time being in force and in accordance with the provisions thereof, the Supreme Court shall have full power and jurisdiction to hear and determine all appeals, whether civil or criminal, made to the said Court from—

(*a*) The Supreme Court of the Colony of the Seychelles ;

(*b*) The Court of any District Magistrate, including the Dependencies ;

(*c*) The Master and Registrar of the Supreme Court ;

(*d*) A Judge in Chambers ;

(*e*) A Bench of Magistrates ;

(*f*) The Bankruptcy Division of the Supreme Court ;

(*g*) Any other Court or body established under the provisions of any Ordinance or other enactment.

Appeals to be heard before two Judges.

70. Appeals from the Bankruptcy Division of the Supreme Court, from the Supreme Court of the Colony of Seychelles, from decisions of the Master and Registrar of the Supreme Court, ~~from~~ decisions of District Magistrates, or of Benches of Magistrates, shall be heard before at least two Judges.

of a Judge in Chambers added 4/3/47

CHAPTER VI

JURISDICTION IN CHAMBERS OF JUDGES OF THE SUPREME COURT

Matters which may be disposed of by a Judge's order in Chambers.

71. Applications for or concerned with or in respect to any of the matters set out hereinafter in this section and any matters connected therewith may, subject to the direction of the Judge in any particular case to refer the same to the Court, be finally disposed of at Chambers by a Judge's order, which order shall be a sufficient authority to the Registrar to issue thereon a rule of Court *de plano*—

K & R 4/3/47

(1) Applications to be let into possession of the unadministered property and rights of a party deceased or absent (*envoi en possession*) ;

(2) Applications for affirmative declarations ;

(3) Applications for cancellation or reduction of mortgage inscription ;

(4) Applications for removal of seizures ;

(5) Applications for the validity or nullity of attachments ;

(6) Applications for partitions of property (where such cancellation, reduction, removal of seizure, validity or nullity of attachment or partition is not objected to by any party thereto) ;

(7) Applications for licitation ;

(8) Applications for judicial sales ;

(9) Applications for affirmations of deliberations of family councils ;

(10) Application for admission of a relinquishment of immovable property ;

(11) Applications touching absent persons under Article 115 of the Civil Code ;

(12) Applications for judicial authorisation of married women ;

(13) Applications for homologations of compromises (transactions) under Article 467 of the Civil Code ;

(14) Applications for the nomination of surveyors, appraisers, skilled witnesses (experts).

Other matters which may be settled by a Judge's order in Chambers.

72. All matters upon which a Judge's order or authority was formerly required from the President of the Court of First Instance or President of the Court of Appeal, previous to the introduction of any action before either Court and all matters which were settled at Chambers by the President of either Court (other than matters in which jurisdiction may have been given exclusively to the District Magistrate), are within the competence of a Judge of the Supreme Court.

Power to grant an injunction.

73. A Judge shall have power, whether in term time or in vacation, to grant an injunction subject to a motion to the Court to dissolve such injunction ; whereon the Court has power to dissolve or modify the same.

Rule to show cause.

74. Whenever a party merely seeks to obtain a rule to show cause, he may make application at Chambers, and the Judge, if sufficient reason be made to appear to him, may, by his fiat to the Registrar, order such rule to issue. Provided always that, if the Judge refuse the same in any matter other than those which are left by law to the discretion of a single Judge, any party dissatisfied with such refusal, may within one week of such refusal if in term time, and if in vacation within the first four days of the ensuing term, make application to the Court to set such order of refusal aside and grant the rule prayed for.

Record of Judge's orders made in Chambers.

75.—(1) The date and nature of every order made by a Judge in Chambers shall be recorded in a book kept for that purpose at the Judge's Chambers. Such orders shall be exempted from registration in the office of the Registrar General.

(2) Such order may be written on unstamped paper.

(3) A fee of fifty cents shall be paid to the Registrar in addition to the sum charged for such order.

Judges may issue warrant or summons.

76. A Judge shall have the power of issuing a summons or warrant of arrest in the case of any offence committed within the jurisdiction of the Supreme Court and in such case the Judge shall order the offender to appear or to be taken before the nearest Magistrate.

CHAPTER VII

COSTS FOR AND AGAINST THE CROWN

In Crown suits where Crown is successful, costs to be recovered as between subject and subject

77. In all informations, actions, suits, and other legal proceedings to be hereafter instituted before any Court in Mauritius, or in any of the Dependencies, by or on behalf of the Crown, against any corporation or person, in respect of any lands, tenements, or hereditaments, or of any goods or chattels belonging or accruing to the Crown, or in respect of any sum of money due and owing to His Majesty by virtue of any Ordinance relating to the revenue, His Majesty's Procureur and Advocate General shall be entitled to recover costs for and on behalf of His Majesty, whereby judgment shall be given for the Crown, in the same manner and under the same rules, regulations and provisions, as are or may be in force touching the payment or receipt of costs in proceedings between subject and subject ; and such costs shall be paid into the Treasury.

Defendant entitled to costs, if successful against the Crown.

78. If in any such information, suit, action, or other proceeding, judgment shall be given against the Crown, the defendant shall be entitled to recover costs in like manner and subject to the same rules and provisions as though such proceeding had been had between subject and subject ; and the Accountant General shall pay such costs out of the revenue upon a written order to that effect granted and signed by the Registrar of the Court which may have given such judgment.

Provisions of this Chapter to be applicable to proceedings by subject against Crown.

79. The provisions of the two preceding sections shall apply *mutatis mutandis* to all informations, actions, suits, or other legal proceedings to be instituted before any Court in Mauritius or any of its Dependencies by or on behalf of any corporation or person against the Crown, in respect of any matters or things of the nature therein enumerated.

PART III—DISTRICT MAGISTRATES COURTS

CHAPTER I

CONSTITUTION OF MAGISTRATES COURTS

District Courts.

80. There shall be in every district of the Colony one or more Courts called District Courts, which Courts shall be Courts of Record and shall be holden by and before a Magistrate who shall bear the style and title of " District Magistrate ", and such District Courts shall be Courts of civil and criminal jurisdiction in such causes and matters and to such extent as shall be hereinafter provided.

Where and when holden.

81. District Courts shall be holden at such place or places in each district and on such days and at such times as the Governor may order.

Seal.

82. Every District Court shall have a seal and all summonses and other process issuing out of the said Court which may be required to be under seal, shall be sealed with such seal.

Governor may appoint Magistrates in Mauritius and the Dependencies thereof.

83. It shall be lawful for the Governor to appoint as many fit and proper persons as may be needed to be Magistrates for Mauritius and the Dependencies, and every person so appointed shall by virtue of such appointment have and may exercise jurisdiction as a District Magistrate in each and every district of the Colony and as Magistrate of the Dependencies, subject to the provisions of section 87 :

Provided that he shall exercise such jurisdiction only in such district or districts or in such Dependencies as may be assigned to him by the Governor.

Qualifications of Magistrates.

84. No person shall be eligible for appointment to the office of District Magistrate unless he be a barrister or advocate admitted to practice in one of the Superior Courts of the United Kingdom and of at least five years standing at the Bar.

Disqualification of Magistrates.

85. No Magistrate so long as he holds office as such, shall do any other work or hold any other office, whether for or without remuneration, without the instructions or permission of the Governor.

Assignment of Districts etc., to Magistrates.

86.—(1) The Governor may, on the recommendation of the Chief Justice, assign a district or districts to any Magistrate for Mauritius and the Dependencies, or may direct such Magistrate to act in any other district instead of, or in addition to any district or districts already assigned to him, or may direct such Magistrate to hear and determine any case civil or criminal or make enquiry into any crime out of any district or districts already assigned to him, ~~or to take, follow up and determine any case, cause, enquiry or proceeding begun before another Magistrate~~ or otherwise to act in lieu and place of another Magistrate.

(2) The Governor may assign the Island of Rodrigues or the Lesser Dependencies to any Magistrate for Mauritius and the Dependencies.

(3) Any Magistrate assigned the Lesser Dependencies shall have and exercise the same rights, duties, powers, and jurisdiction as any other District Magistrate and shall, in addition thereto, perform such administrative or other duties as may be allotted to him by the Governor.

(4) Any such instructions from the Governor shall be communicated by the Chief Justice in writing and shall further (except an order to hear and determine a case, to make an enquiry, or to continue a case begun by another Magistrate) be notified in the *Government Gazette.*"

Divisions of District Courts.

87. Whenever two or more Magistrates have been appointed to any District, it shall be lawful for the Governor by Proclamation to declare that the Court for the District shall sit in two or more Divisions, as the case may be, and the names by which such Divisional Courts shall be designated.

Division of Port Louis District Court.

88. In Port Louis the District Court shall sit in two Divisions, to deal with civil and criminal matters, designated as the " First Division " and the " Second Division " of such Court respectively.

Flat Island and Gabriel Island.

89. Flat Island and Gabriel Island, for the purposes of this part of this Ordinance, shall not be considered dependencies of Mauritius but shall be deemed part of the District of Rivière du Rempart as if the said Islands formed part of the shore of Mauritius within the said district.

Language and interpretation.

90.—(1) The language of all District Courts shall be English, but any person may address the Court in French. Whenever any person giving evidence satisfies the Court that he does not possess a competent knowledge of the English or French language, he may give his evidence in the language with which he is best acquainted.

(2) Whenever any person appearing before the Court gives his evidence in a language other than English or French, the proceedings, if the Magistrate so directs, shall be translated in Court into that language.

Recording of evidence before District Magistrate's Court.

91. In every case or matter heard before the Court of a District Magistrate, the Magistrate shall take down in writing the oral evidence given before the Court.

Appointment of clerks and interpreters.

92.—(1) As many proper persons as are needed may be appointed by the Governor to be clerks and interpreters for the District Courts. Such officers shall be deemed appointed for the whole Colony and may be removed from one District Court and ordered by the Chief Justice to act in any other District Court or Courts.

(2) The senior or principal clerk attached to a District Court shall be called the District Clerk of such Court, but every Clerk or Assistant Clerk shall have the same powers as the District Clerk and may perform any act which the law may require the District Clerk to perform :

Provided that the Magistrate, with the approval of the Chief Justice, may issue directions as to the distribution of business among such officers.

(3) All such officers shall on their first appointment take the oath of allegiance and the official oath, but not the judicial oath.

Interpreters may be called upon to act as clerks.

93. All interpreters attached to District Courts shall be deemed to be and on an order of the Magistrate may act as clerks attached to the District Courts of which they are interpreters.

Ushers.

94. The Governor may, on the recommendation of the Chief Justice, appoint as many persons as may be needed to be ushers to serve and execute all such summonses, orders, writs and warrants of the Court and any extra judicial process as they may be required to serve or execute.

Clerks to issue summonses, etc.

95. The clerk shall issue summonses, warrants and writs of execution and register all orders and judgments and keep an account of all proceedings, and shall keep accounts and books of all fees and fines and money paid in or out of the Court, and such other books or accounts as such officers now keep or as they may be directed to keep by the Governor.

All costs shall be taxed by the clerk, subject to revision by the Magistrate, on the application of any party interested.

Custody of records.

96. The clerk shall have the custody of the records and shall cause a note of all plaints, informations, warrants and summonses, and of all orders, judgments and executions and of all other proceedings to be fairly entered in a book which shall be kept at the office of the Court and such entries in the said book, or a copy thereof, purporting to be signed and certified as a true copy by the clerk shall, at all times, be admitted in all Courts as evidence of such entries and of the proceedings referred to by such entries, and of the regularity of such proceedings without further proof.

Duties of clerks.

97. The clerk and assistant clerk attached to a District Court other than Port Louis shall be the Civil Status Officers for such District.

Security.

98.—(1) All clerks and ushers shall give such security as may be determined by the Governor for the due performance of their respective duties, and for the due accounting for and payment of all money received by them or on their behalf or for which they may become liable by reason of any misbehaviour in the discharge of their respective duties.

(2) Any security bond entered into for the due performance by any such officer of his duties as clerk or assistant clerk attached to any District Court, or entered into on the provisional appointment of any such officer shall be and remain valid and binding on the principal and sureties if subsequently such officer is transferred to any other District, or if he is confirmed in his appointment:

Provided that nothing herein contained shall prevent any surety from withdrawing his security, and on his giving notice of such withdrawal to the Colonial Secretary, such surety shall cease to be liable for anything done by the officer subsequently to such notice.

Change of venue.

99. It shall be lawful for any Judge of the Supreme Court, upon application by or on behalf of the Procureur General, or by any Magistrate, or by or on behalf of any private party to any cause, or matter, civil or criminal, before a District Court, in which it shall be deemed just and expedient that the venue be changed from that District Court, to any other District Court, to order that such case or matter be transferred to such other District Court for hearing and determination.

It shall be lawful for the Judge to impose any condition as to costs that he may deem just and expedient, and his order shall be to all intents and purposes final and not liable to be appealed against or disputed in any matter whatsoever.

Stay of proceedings.

100. In any such case if before the Judge's order has been made known to the District Magistrate such Magistrate shall have issued a warrant of arrest, or have received a criminal information, or if a plaint shall have been entered, or if a summons shall have been issued, or if any other process shall have been executed, or proceedings have been taken either on the civil or the criminal side of the said District Court, such Magistrate shall, on receiving notice of the Judge's order, stay all proceedings and forward the original warrants, informations, plaints, summonses, processes or documents before him to the District Magistrate appointed to inquire into, or hear, try and determine the said case, and such warrants, informations, plaints, summonses, processes or documents of any nature, substance or form whatsoever, shall be held to have been issued or received by the District Magistrate or entered, carried on and filed in the District Court of the Magistrate so appointed and it shall not be lawful for any Court of Justice to dismiss, annul, quash, set aside, or otherwise invalidate the said warrants, informations, plaints, summonses, processes or proceedings on account of the transfer thereof from the District Court to the District Court of the Magistrate so appointed:

Provided that no change of venue shall be allowed after the Magistrate has begun the trial of any case civil or criminal on the merits.

Acts of District Magistrates not affected by errors as to venue.

101. No act done by or under the authority of a District Magistrate shall be void or impeachable by reason that such act was done, or that any act, offence, or matter in respect of or in relation to which such act was done, occurred, or was situated beyond the limits of the area for which such District Magistrate was appointed. If the defendant in any civil or criminal cause wherein such objection might but for this Ordinance be valid, shall at or before, but not after, the time when he is required to state his answer or to plead in such cause or matter before the Magistrate, allege specially any such objection, the Magistrate shall consider the same, and if he considers the objection founded in law he shall report such cause or matter to the Supreme Court,

and the Supreme Court shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

Summonses to witnesses.

102.—(1) Any party to a civil or criminal case, enquiry, or other proceeding may obtain at the office of the clerk summonses to witnesses, with or without a clause requiring the production of books, deeds, papers or writings in their possession, and in any such summons any number of names may be inserted :

Provided that no summons shall be issued calling the Magistrate of the District as a witness, except by leave of a Judge of the Supreme Court in Chambers and provided that the person asking for the issue of the summons satisfies the Judge that the Magistrate has some material evidence to give on such person's behalf.

(2) Every person on whom any such summons shall have been served, who shall refuse or neglect without sufficient cause to appear or to produce any books, papers or writings required by the summons to be produced, and any person present before the Magistrate who on being required to give evidence shall refuse to be sworn or affirmed or to make a solemn declaration as the case may be and to give evidence, shall be liable to a fine not exceeding one hundred Rupees (Rs. 100) to be inflicted by the Magistrate before whom such default or refusal occurs :

Provided that any witness not appearing when duly served with a summons may be arrested by order of the Magistrate and brought before him to give evidence :

Provided further that in the case of any prosecution entered by or against any public officer, acting in the discharge of his duties as such, any officer of the Department to which the officer belongs, whose attendance as a witness may be required, may be served by any other officer of the same Department, duly authorised to that effect by the Head thereof, with a notice in writing to attend Court. Such notice, duly signed or initialled by the said witness, with the return of service duly entered thereon, shall be the equivalent, to all intents and purposes, of a regular summons served by an usher.

Contempt.

103. If any person shall wilfully insult the Magistrate or any clerk, usher, or officer of the Court during his sitting or attendance in Court or during any enquiry, or shall wilfully interrupt the proceedings of the Court or otherwise misbehave in Court or before the Magistrate, it shall be lawful for any usher or officer of the Court, with or without the assistance of any person, by the order of the Magistrate, to take such offender into custody and detain him till the rising of the Court ; and the Magistrate shall be empowered, if he shall think fit, by a warrant under his hand and sealed with the seal of the Court, to commit any such offender for a time not exceeding seven days, or to impose upon such offender a fine not exceeding one hundred Rupees (Rs. 100) for any such offence, and in default of payment thereof, to commit the offender for any time not exceeding seven days, unless the said fine be sooner paid.

Security for costs

104. The Magistrate may, on the application of the defendant, require the plaintiff to give security for costs in all cases in which under the Civil Code such security may be required and also when the plaintiff is known to be insolvent.

Examination of witnesses.

105.—(1) All witnesses heard in any proceeding before a Magistrate shall be heard upon oath, and may be examined, cross-examined and re-examined in accordance with the law of evidence applicable to this Colony.

(2) Any witness giving false evidence in any proceeding before a Magistrate shall be liable to imprisonment not exceeding two years.

Error and *certiorari* taken away.

106. No judgment, order, or determination, given or made by any Magistrate nor any cause or matter brought before him, or pending in his Court, shall be removed by appeal, motion, writ of error, *certiorari* or otherwise into any other Court whatever, save and except in the manner and according to the provisions of law governing appeals :

Provided that an order of the Magistrate sentencing a debtor to imprisonment may be removed by *certiorari* before the Supreme Court.

Jurisdiction under Merchant Shipping Act.

107. District Magistrates shall take cognizance of all suits for the recovery of wages by seamen and apprentices in all cases where under the Merchant Shipping Act, 1894, such suits may be heard before two Justices of the Peace. And such suits may be instituted by summary proceedings before a Magistrate who shall be deemed to have the powers of one or more Justices of the Peace within the meaning and for the purposes provided in the said Act.

District Magistrate to have power of Justice of the Peace.

108. Every District Magistrate in Mauritius and its Dependencies shall have such and the like powers, privileges and functions, and be entitled to exercise such and the like jurisdiction under any Act of the Imperial Parliament extending to Mauritius as any Justice or two Justices of the Peace have, or is or are entitled to exercise under the provisions of any such Act of Parliament ; and all acts, matters and things competent to be done under the provisions of any such Act of Parliament by or before any Justice or two Justices of the Peace may be done by or before any District Magistrate.

Convocation and holding of family councils.

109. Family councils of minors or interdicted persons whenever required by any law may be convened and held by and before the District Magistrate of the district in which the minor

or interdicted person is domiciled, or before the Master of the Supreme Court upon an application made directly to the said Master.

Reservation of questions of law for the opinion of the Supreme Court.

110. In addition to and without prejudice to the right of appeal conferred by this or any other Ordinance, any District Magistrate may reserve for consideration by the Supreme Court on a case to be stated by him, any question of law which may arise on the trial of any civil suit or matter, and may give any judgment or decision, subject to the opinion of the Supreme Court, and the Supreme Court shall have power to determine any such question after hearing the parties to the case.

District Magistrates responsible for control and supervision of Court.

111. Every District Magistrate shall be entrusted with the general control and supervision of the Court over which he presides.

District Magistrates subject to the directions of the Chief Justice.

112. Without prejudice to the powers of the Governor, and notwithstanding anything to the contrary contained in any enactment in force in the Colony, every District Magistrate shall, for administrative purposes, be subject to the directions of the Chief Justice and every District Magistrate shall comply with all such directions; and the administrative supervision over District Magistrates hitherto exercised by the Procureur General shall cease and determine as from the date of the commencement of this Ordinance.

Issue of written instructions to Magistrates by Chief Justice.

113. Without prejudice to the provisions of the preceding section, the Chief Justice may, from time to time as may be necessary, issue written instructions to District Magistrates as to their administrative duties and may, in such instructions, incorporate all financial and administrative instructions and directions given from time to time by the Governor or the Colonial Secretary or the Accountant General; and every District Magistrate shall comply with all such instructions and directions; and the Chief Justice may, as may be convenient, cause all such instructions and directions to be published and styled District Magistrates Administrative and Financial Standing Orders.

Reports by District Magistrates to Chief Justice.

114. The Chief Justice may, whenever he shall think fit so to do, require any District Magistrate to render to him, in such form as he shall direct, a report on any case, civil or criminal, which may have been brought before such Magistrate, and may at any time call for the record of any such case.

Bench of Magistrates.

115. The provisions of sections 112 and 114 shall apply *mutatis mutandis* to any Bench of Magistrates to the same extent as they apply to a District Magistrate.

CHAPTER II

JURISDICTION OF DISTRICT MAGISTRATES

(i) Civil Jurisdiction

General jurisdiction of District Courts in civil cases.

116. Every Magistrate shall have jurisdiction in all civil cases save as hereinafter excepted, whenever the sum or matters in dispute, whether in balance of ~~amount~~ or otherwise, shall not exceed the amount or value of one thousand rupees (Rs. 1,000) exclusive of interest and costs.

When jurisdiction not ousted.

117.—(1) The jurisdiction of the Magistrate shall not be ousted when in order to adjudicate upon a claim within his jurisdiction, he has to decide upon a right to or contract concerning money or property exceeding one thousand rupees (Rs. 1,000) in value.

(2) When a claim shall be made to goods seized in execution of a judgment and the value of the goods shall not exceed one thousand rupees (Rs. 1,000) the Magistrate shall have jurisdiction to entertain such claim even when the goods have been seized in execution of a judgment of the Supreme Court, provided the claim shall be made within such period and in such form as may be prescribed by Rules of Court.

Action by landlord.

118. The Magistrate shall have jurisdiction in any action by a landlord to obtain cancellation of a lease, with or without damages, or to recover possession of real property from a tenant or occupier, including actions where the value of such property exceeds one thousand rupees (Rs. 1,000). Such cancellation of lease, damages and possession may be claimed in the same plaint in which rent is claimed:

Provided always that the yearly rent or rental value of the property shall not exceed one thousand rupees (Rs. 1,000) and the sum claimed for damages, if any, and for rent do not together exceed one thousand rupees (Rs. 1,000).

Alimony.

119.—(1) The Magistrate shall have jurisdiction in actions for payment of alimony by a wife against her husband, or between any other person in a case where the law gives a right to an alimony:

Provided the alimony claimed shall not exceed one thousand rupees (Rs. 1,000) per annum.

(2) A Magistrate awarding alimony in an action under this section may notwithstanding any provision of any enactment for the time being in force relating to the attachment of salaries, issue in execution of his judgment an attachment against any portion not exceeding one-third of any salary or pension of which the defendant may be in receipt.

Possessory actions.

120.—(1) The Magistrate shall have jurisdiction in possessory actions concerning any land, premises, runs of water or other real property or any other right arising out of real property including actions where such property or right exceeds one thousand rupees (Rs. 1,000) in value, when the plaintiff claims to be maintained or restored to the quiet enjoyment and possession of such property or right :

Provided—

(*a*) The possessory action has been entered within one year from the imputed tresspass, and

(*b*) The plaintiff has been in quiet possession for one full year at least.

(2) In such possessory action damages not exceeding one thousand rupees (Rs. 1,000) may also be claimed.

(3) When the value of the property or right concerning which a possessory action is brought does not exceed one thousand rupees (Rs. 1,000), the Magistrate may go into and decide upon the question of ownership if the same be raised.

Magistrate to have certain powers under Codes.

121.—(1) The Magistrate shall have all the powers vested by the Civil Code and the Code of Civil Procedure in the Juge de Paix in all matters relating to the apposition and removal of seals, family councils, including family councils of minors or interdicted persons, election, removal or change of guardians or curators to minors or interdicted persons, and adoption, *tutelle officieuse*, emancipation of minors, and in all cases in which a family council is required.

(2) In case of absence of the Magistrate, the clerk shall have power to affix seals without any order from the Magistrate.

(3) Any District Magistrate may, in any civil cause or matter, when a party or witness cannot attend before such Magistrate's Court through illness or other lawful impediment, and when it shall appear necessary for the purposes of justice, proceed to any place in or out of his District in order to examine such party upon his personal answers, or to take the evidence of such witness upon oath, provided due notice is given to interested parties.

Jurisdiction taken away in certain cases.

122. The Magistrate shall have no jurisdiction in any action or suit for divorce, separation *a mensa et thoro*, interdiction of persons, or in matters of bankruptcy, or in any action wherein the civil status of any person, or any right of an inheritance, or any right arising out of a contract of marriage or the ownership or usufruct of immovable property or servitude thereon of a value exceeding one thousand rupees (Rs. 1,000) is in question, or where the validity of any will or other testamentary instrument, or any [illegible] is disputed.

Challenge.

123. No challenge shall be allowed against a District Magistrate save on the ground of personal interest in any cause or matter brought before him, or of his being related to one of the parties in the suit by blood or marriage either in the direct line or in the collateral line to the degree of first cousin inclusively. If on such challenge deposited with the clerk the Magistrate thinks he has no sufficient reason for abstaining from hearing the cause, he shall set down such reason in answer to the said challenge, and the whole proceeding shall be transmitted by the Clerk to the Registrar for submission to any one of the Judges who shall determine the question of challenge summarily, without the presence of the parties being necessary. Whenever such challenge shall not have been admitted, the Judge may award against the party having made the same, costs not exceeding fifty rupees (Rs. 50).

(ii) *Criminal Jurisdiction*

Jurisdiction to convict.

124. Every Magistrate before whom any person shall be charged with having committed an offence, not being one of the offences mentioned in section 127, shall have power and jurisdiction, whatever may be the minimum punishment imposed by law with respect to the offence so charged, to hear, try and determine such charge and all questions of fact and law arising in the case and to convict such person, and on conviction to award against such person any penalties not exceeding the maximum penalties applicable to the offence of which such person is convicted :

Provided that it shall not be lawful for the Magistrate to award against any offender imprisonment with or without hard labour for more than one year, or any fine exceeding one thousand rupees (Rs. 1,000) :

Provided further that in passing any sentence under the Penal Code the Magistrate shall have power to inflict less than the minimum penalty which, under the Penal Code, may be inflicted for the offence tried.

Jurisdiction to extend to future offences.

125. The jurisdiction given in section 124 shall extend to any offence which may be hereafter created or provided for by any future law, unless such offence shall be one punishable by death or penal servitude for life, or unless under such law such offence shall be triable before a jury or shall be otherwise taken out of the summary jurisdiction of the Magistrate.

Magistrate may commit for trial in certain cases within his jurisdiction.

126. Whenever in any case in which the Magistrate has jurisdiction to convict he shall consider the offence deserving of a severer punishment than he could inflict on conviction of the offender, or whenever in any case charged as being within his summary jurisdiction he shall consider that the evidence discloses an offence not within his summary jurisdiction, the Magistrate

shall with the consent of the Procureur General proceed in accordance with the provisions of the law for the time being in force relating to Preliminary Enquiries and commitment for trial.

Matters excluded from summary jurisdiction.

127. District Magistrates shall have no jurisdiction to convict, but shall proceed to hold a preliminary enquiry and if necessary to commit for trial in accordance with the provisions of the law for the time being in force relating to Preliminary Enquiries and commitment for trial when the accused is charged with one or more of the following offences—

(1) Crimes and misdemeanours against the safety of the state : Penal Code, Articles 50 to 76.

(2) Abuse of authority : Penal Code, Articles 77 to 91, except offences against Articles 80, 81, 84, and 87.

(3) Forgery : Penal Code, Articles 92 to 121, except offences against Articles 95, 96, 103, 105, 114 to 120.

(4) Crimes and offences committed by public functionaries in the discharge of their functions : Penal Code, Articles 122 to 138, except offences against Articles 136 and 137.

(5) Offences against the public peace, occasioned by ministers of religion, in the exercise of their functions, or by any person officiating as a preacher : Penal Code, Articles 140 to 143.

(6) Resistance to public authority by accused persons : Penal Code, Articles 145 to 146.

(7) Associations of malefactors : Penal Code, Articles 188 to 191.

(8) Unlawful administration of Oaths : Penal Code, Article 214.

(9) Manslaughter, murder, paricide, infanticide and poisoning : Penal Code, Articles 215 to 223.

(10) Wounds and blows causing death : Penal Code, Article 228, paragraph 2, and Article 229.

(11) Involuntary homicide : Penal Code, Article 239.

(12) Castration and miscarriage : Penal Code, Articles 234 and 235.

(13) Administering poison : Penal Code, Article 236, paragraph 1.

(14) Rape and sexual intercourse with females under twelve years : Penal Code, Article 249, paragraphs (1) and (4).

(15) Sodomy, bestiality and offences against morality : Penal Code, Articles 250 and 251.

(16) Bigamy : Penal Code, Article 257.

(17) Unlawful arrests and sequestration of persons : Penal Code, Article 259.

(18) Perjury committed before the Supreme Court or the Colonial Court of Admiralty.

(19) Libel, defamation and public slander : Penal Code, Articles 283, 284, 291, except offences against Articles 288, 289, 296 and 297.

(20) Larceny : Penal Code, Articles 303 and 304.

(21) Arson : Penal Code, Articles 346 and 347.

22 Malicious Injury to Property - P.C. Arts 33 - added

23(~~22~~) Attempts at offences in the cases excepted from the jurisdiction of District Magistrates, and all cases of complicity in offences excepted by this Ordinance from the said jurisdiction.

24(~~23~~) Offences which under any Act of the Imperial Parliament now in force or to be hereafter enacted may be tried in this Colony and are or shall be punishable by death, transportation, penal servitude or imprisonment with or without hard labour for more than 12 months.

25 (~~24~~) Offences which under any law now in force or to be hereafter enacted are or shall be made punishable by death or penal servitude for life, or are or shall be excluded from the jurisdiction of the Magistrate.

Amended 12/Sc/14/

Procureur General may refer certain cases for determination by Magistrate.

128. Notwithstanding the provisions contained in the preceding section, when a person is charged with any of the offences provided for by Articles 77, 79, 124, 126, 127 and 128 of the Penal Code, the Procureur General may either before or after commitment of the accused, authorise the Magistrate to entertain the case and to proceed to adjudication therein, and thereupon the Magistrate shall have power to try, acquit or convict the person charged with such offence, as if such offence was not one of those mentioned in section 127.

Murder and manslaughter on high seas.

129. Where any murder, felony, or assault has been committed on the high seas, and where any person charged with or suspected of such murder, felony or assault shall be found within this Colony, it shall be competent for a Magistrate to enquire into such charges, and commit, remand or discharge the persons thus charged in conformity with the provisions of the Act 12 and 13 Vict., Chap. 96, entitled " An Act to provide for the prosecution and trial in Her Majesty's Colonies of offences committed within the jurisdiction of the Admiralty ".

Jurisdiction under Acts of Parliament.

130. Any Magistrate shall have summary jurisdiction to try a person charged with any offence which under any Act of the Imperial Parliament extending or applying to this Colony may be tried by two Justices of the Peace or is punishable by imprisonment with or without hard labour for any period not exceeding twelve months.

Jurisdiction in cases of assault on board ship.

131. In case of any assault committed or wound or blow inflicted on board any ship belonging to any subject of His Majesty during the voyage from any other port or place to this Colony, or whilst such ship shall be lying at anchor in Mauritius, it shall be

lawful for a Magistrate, upon complaint of the party aggrieved, to hear and determine any such complaint in a summary manner, and to proceed and adjudicate thereon.

Magistrate may bind persons to keep the peace.

132.—(1) Any Magistrate having reasonable ground shown to him on oath for suspecting that any party has the intention of committing a breach of the peace, may issue a warrant under his hand, commanding that such party be brought before him and may require and take from such party, security for his peace and good behaviour, by his own recognizance, and that of one or more persons as sureties on his behalf, to the satisfaction of the Magistrate, in any reasonable sum or sums to His Majesty and His Successors, to the intent that, for a reasonable time to be therein limited, such party shall keep the peace and be of good behaviour, either generally towards all people, or specially towards some particular person or persons; and in default of such security, such Magistrate shall commit the party failing to find the same to prison for a period not exceeding three months.

(2) Any recognizance entered into under this section may be forfeited and execution may be issued thereon whenever the Magistrate, after hearing the person so bound and his sureties, or after they have been summoned to appear, shall find that the person so bound has not kept the peace or been of good behaviour as in the recognizance provided.

Magistrate may swear in special constables.

133. In any case of tumult, riot or crime, committed or reasonably to be apprehended, when the ordinary officers do not appear sufficient to preserve the peace, any Magistrate may appoint and swear in any householder resident in his district to act as a special constable for such time and in such manner as to such Magistrate shall seem fit, which service all such householders are hereby commanded to render when required, under a penalty not exceeding one hundred rupees (Rs. 100) in case of refusal to act.

Magistrate may call for police or military.

134. Every Magistrate shall have full power and authority to call for and order in the aid and assistance of the police force for the purpose of enforcing the law, and also to call in the aid of the military force for the suppression of any riot, rout, or unlawful assembly in any case where the civil power shall be, by the Magistrate, deemed insufficient for the purpose.

Further powers of Magistrates in criminal matters.

135. A Magistrate shall have power and may be required to do all and any of the following things, even in a district to which he has not been appointed or which has not been assigned to him.

(1) Issue a warrant to apprehend a party charged, or a search warrant.

(2) Take bail for the appearance of a party arrested before the proper Magistrate or Court.

(3) Take and receive any dying declaration.

(4) Take and receive the deposition of a witness in the presence of a party charged with one or more of the offences mentioned in section 127.

(5) Order the performance of a post mortem examination, and for the purpose of such examination order the body of a person which has already been interred to be disinterred. And any such act shall be as valid as if done by a Magistrate to whom the district, in which the act is done, had been assigned:

Provided nothing herein contained shall authorise a Magistrate to hear a case or to make an inquiry and commitment for trial which he has not been directed to hear or make, or in any district not assigned to him as provided in section 83.

CHAPTER III

BENCH OF MAGISTRATES

Power to constitute a Bench of Magistrates and jurisdiction thereof.

136. It shall be lawful for the Procureur General to elect to file an information in any of the following cases before a Bench in lieu of filing the same before a single Magistrate—

(*a*) Any case in which a Magistrate has jurisdiction to convict;

(*b*) Any case referred to in section 128 of this Ordinance;

(*c*) Any case under Articles 92, 93, 94, 97, 98, 100 (2) and (3), 108, 109, 111, 112, 122, 122 (2), 249 (4), 250, 251, 283, 284, 291 and 352 of the Penal Code;

(*d*) Any case declared under the provisions of any enactment in force in the Colony to be triable by a Bench.

Constitution of Benches of Magistrates.

137. The Bench of Magistrates shall consist of three Magistrates determined in the manner following—

(*a*) In Port Louis:

The two Magistrates of Port Louis and one of the Magistrates for the districts of Pamplemousses—Rivière du Rempart;

(*b*) In Pamplemousses—Rivière du Rempart:

The two Magistrates for these districts and one of the Magistrates for the districts of Grand Port—Savanne;

(*c*) In Flacq—Moka:

The two Magistrates for these districts and one of the Magistrates for the districts of Pamplemousses—Rivière du Rempart;

(*d*) In Grand Port—Savanne:

The two Magistrates for these districts and one of the Magistrates for the districts of Plaines Wilhems—Black River;

(*e*) In Plaines Wilhems (Rose Hill and Curepipe Divisions) and Black River:

The two Magistrates for these districts and one of the Magistrates for the districts of Grand Port—Savanne.

The Governor may issue directions to the Magistrates as to the distribution and despatch of business.

Challenge by Magistrate.

138. Whenever a Magistrate who is to sit either alone or as a member of a Bench of Magistrates considers that there is cause why he should not act, he shall give notice to the Chief Justice, and the Chief Justice shall decide if the alleged cause is of such a nature as to warrant the Magistrate from not acting and thereupon make an order accordingly.

Replacing of Magistrates.

139.—(1) If from any cause a Bench cannot be formed in accordance with the provisions of section 137 or if any Magistrate is unable from challenge or other legal impediment to sit either alone or as a member of a Bench of Magistrates for the hearing of any case, the Chief Justice shall designate any person holding an appointment as District Magistrate to form or to complete the number of Magistrates required for the said Bench or to replace any Magistrate unable to sit as aforesaid.

The said Magistrate shall be chosen consecutively from a list drawn up in order of seniority, but the Chief Justice may depart from that order in case of need; and a letter under the hand of the Master signifying such assignment to the Magistrate designated shall be filed in the record and shall be conclusive as to his competency to form or to complete the number of Magistrates required for the Bench, or to sit either alone or as a member of a Bench for the hearing of the case.

(2) The Chief Justice may in the same manner direct any Magistrate to take, follow up and determine any case or proceeding begun before a Bench of Magistrates in the case of any member of such Bench being unable from any cause and at any stage of the proceedings to continue to sit on such Bench.

(3) The first paragraph of this section shall, so far as it is applicable, extend to all civil cases heard under Ordinance No. 22 of 1888.

Adjournment of cases by clerks.

140. Whenever the clerk of any District Court is satisfied that a Bench of Magistrates is unable to sit on any day appointed it shall be lawful for him to adjourn the hearing of any case fixed for that day to any subsequent day; and any such order of the clerk shall be equivalent to an order of adjournment made by the Magistrate or Bench:

Provided that in the event of one or two Magistrates forming part of a Bench being absent, it shall be lawful for the other Magistrates or Magistrate present to adjourn the hearing of the case:

Provided also that if an accused be in custody the clerk, Magistrates or Magistrate, as the case may be, may remand the accused and take or enlarge bail for the appearance.

For the purpose of taking bail the clerk shall have power to receive affidavits.

Information.

141. The information in any case aforesaid may be laid before the Magistrate of the district in which the offence shall have been committed. Such information may contain any number of counts ~~not exceeding three against the same person~~:

Provided that if the Bench be satisfied that by such joinder of counts the accused may be prejudiced in his defence, the Bench may restrict the prosecutor to the proof of one or more of such counts against such accused as the Bench shall deem just:

Provided further that any penalties inflicted on the several counts shall not together exceed the maximum penalty which the Bench may inflict under section 148.

Proceedings until trial.

142. Until the trial, the case referred as above enacted shall be dealt with as being within the jurisdiction of the Magistrate of the district in which the offence is stated to have been committed.

Trial.

143.—(1) The Bench shall be a Court of Criminal Jurisdiction and shall hold its sittings publicly in the District Court of the District where the offence is stated in the information to have been committed.

(2) The trial before the Bench of Magistrates shall proceed in the same manner as a trial before a Magistrate sitting alone, and all the powers given to and the duties imposed upon such Magistrate are hereby given to and imposed upon the Bench in addition to the other powers and duties hereafter provided.

(3) Any objection to the constitution of the Bench must be taken by the accused before he pleads to the information.

Minutes of proceedings.

144. The minutes of the evidence and proceedings shall be taken by any of the Magistrates forming the Bench, and it shall not be necessary that they be taken by the same Magistrate throughout the trial.

Minutes of judgment.

145. The minute of every judgment given shall be signed by the three Magistrates, if unanimous, and if the judgment be not unanimous, each Magistrate shall sign the minute of his judgment.

Judgments to be unanimous or by a majority.

146. All judgments of the Bench of Magistrates shall require to be unanimous or by a majority.

Bench may convict of a lesser offence or on some of the counts.

147. The Bench may find the accused guilty of any lesser offence included in the offence charged and acquit him of the rest of the charge, or may convict on one or several counts and acquit on the others.

Penalties.

148.—(1) The Bench shall have jurisdiction to inflict the penalties and forfeitures enacted by the law applicable to the offence tried, provided that it shall not decree penal servitude for more than three years, imprisonment for more than two years with or without hard labour, and imprisonment in default of payment of fine for more than six months.

(2) In passing any sentence under the Penal Code the Bench shall have power to inflict less than the minimum penalty which, under the Penal Code, may be inflicted for the offence tried.

(3) It shall further have the same power to make a decree for costs as a Magistrate has in any criminal matter.

Authentication and custody of proceedings.

149.—(1) All warrants of arrest, commitment, distress or execution and summonses to be issued at or in consequence of the trial before the Bench, formal convictions, copies of judgments and proceedings before the said Bench, recognizances on appeal or otherwise, may be issued by and authenticated under the hand of any of the Magistrates composing the same or of the Magistrate for the time being of the district in which the case shall have been tried.

(2) All proceedings before the Bench shall be and remain in the custody of the clerk of the Court in which the Bench holds its sittings.

Provisions applicable to judgments, etc., of Magistrates to apply to judgments of Bench.

150. All the provisions of this or any other Ordinance applicable to judgments, convictions, sentences or orders pronounced by a Magistrate sitting alone shall apply to judgments, convictions, sentences or orders of the Bench.

Certain provisions not to apply to Dependencies.

151. The provisions of Chapter I, Chapter II and Chapter III of this part of this Ordinance shall not apply to the Dependencies.

CHAPTER IV

Visit of Magistrates to Lesser Dependencies

Magistrates to visit Lesser Dependencies from time to time.

152. Without prejudice to the provisions of section 83 of this Ordinance, it shall be lawful for the Governor to appoint from time to time as may be necessary fit and proper persons as Magistrates to visit those islands of the Lesser Dependencies where no Magistrate has been appointed or is resident. Any person performing the duties of a District Magistrate and exercising jurisdiction in such Dependencies shall, while in such islands, perform such administrative duties as may be entrusted to him by the Governor.

Visits of Magistrates to islands.

153.—(1) The Magistrates so appointed shall visit the islands at such times as they shall be directed by the Governor after consultation with the Chief Justice, and shall administer justice therein between the Crown, private individuals, and masters and servants:

Provided that so far as may be possible each island shall be visited at least once in every twelve months; and if any island has not been visited for a period of twelve months it shall be visited on the first opportunity in the ensuing twelve months.

(2) The Magistrates shall further have power to visit and inspect all the establishments on the islands, and all camps and houses (other than private dwelling houses) thereon, to inspect the books of the establishment and of the shops and to test the weights and measures used in such shops.

(3) They shall respectively report to the Governor through the Chief Justice the result of each visit and of the inspection made, and generally on all matters connected with the well-being of the islands and of the welfare of the inhabitants. There shall also be included in such report a return of all decisions given, and action taken, in all matters brought before them or which have come under their notice.

Jurisdiction of Magistrates.

154.—(1) The Magistrate shall be vested with the power and authority of District Magistrates in Mauritius, subject to such limitations or conditions as the Governor may deem fit to impose.

(2) A Court shall be held in such convenient room or place in the island, and on such days and at such hours as the Magistrate shall determine.

(3) The Magistrate shall have power, in any case or matter, to appoint and swear in such person as he deems fit to act as interpreter.

PART IV—LAW IN FORCE AND TO BE APPLIED IN THE COURTS.

Law in force in the Colony.

155. The law in force and to be administered and applied by the Courts of the Colony consists of—

(*a*) English law declared by any Act of Parliament to apply to any colony or made to apply to Mauritius by Order-in-Council or otherwise;

(*b*) French law as applied to the Colony at any time by any enactment still in force in the Colony, to the extent that the latter has not been subsequently repealed;

(*c*) Orders-in-Council applied to Mauritius;

(*d*) Ordinances passed at any time by the properly constituted legislative power of Mauritius and all Regulations made thereunder;

(*e*) Ordinances or Regulations enacted in Mauritius and extended with or without amendment to the Dependencies as provided by section 157.

(*f*) Regulations made by the Governor in Executive Council as provided by section 158:

Provided that all such enactments shall be applied by the said Courts only to the extent that the same have remained unrepealed at the date of the commencement of this Ordinance, and subject to any subsequent repeal or amendment thereof.

Application of Imperial or French laws.

156. All Imperial or French laws declared by any enactment in force at the date of the commencement of this Ordinance to extend or apply to the jurisdiction of the Courts, shall be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future Ordinances of the Council of Government; and for the purpose of facilitating the application of the said Imperial or French laws, it shall be lawful for the said Courts to construe the same with such verbal alterations, not affecting the substance, as may be necessary to render the same applicable to the matter before the Court; and every Judge, or person exercising judicial powers, magistrate or officer of the Supreme Court having or exercising functions of the like kind, or analogous to the functions of any Judge or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned Judge or officer; and whenever the Great Seal or any other seal is mentioned in any such statute it shall be read as if the seal of the Supreme Court or the seal of a District Magistrate's or an Industrial Court were substituted therefor; and in matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions to printing or engrossing on vellum, parchment, or otherwise.

Extension of Ordinances and Regulations of Mauritius to the Dependencies thereof.

157. The Governor in Executive Council may extend to the Dependencies of Mauritius or to any one or more of them any Ordinances or Regulations enacted in Mauritius, subject to such modifications and restrictions as the Governor in Executive Council may think fit, in order to adapt the same to the local circumstances of such dependencies, and may repeal or amend any laws, ordinances, proclamations and regulations in force in the Dependencies at the date of the commencement of this Ordinance or to be enacted hereafter.

Power of Governor in Ex. Co. to legislate for Dependencies by Regulations.

158.—(1) Without prejudice to the provisions of the preceding section, it shall be lawful for the Governor in Executive Council to make Regulations applying to all things and matters in the Dependencies of Mauritius which the Governor in Executive Council shall deem to be necessary or desirable for the good government and general well-being of the Dependencies, and all such Regulations shall have the same force and effect as though they were Ordinances already passed by the Council of Government.

(2) The Governor in Executive Council may at any time repeal or amend any such Regulations which may be in force at the date of the commencement of this Ordinance or which may be enacted hereafter:

Provided that nothing contained herein or in any other enactment shall be deemed to diminish or affect the power of the Governor of Mauritius with the advice and consent of the Council of Government thereof to make laws for the peace, order and good government of the Dependencies aforesaid in the manner provided by Our Royal Letters Patent.

Penalties for contravention of Regulations.

159. Regulations made under section 158 may also provide penalties for their non-observance not exceeding a pecuniary penalty of five hundred rupees (Rs. 500) and imprisonment for three months for any one offence, and for the infliction of such penalties by a Magistrate or other person.

Regulations to be published and laid before Council of Government.

160.—(1) All Regulations made under section 158 shall be published in the *Government Gazette* and shall be laid before the Council of Government;

(2) Provided that the assent of the Governor shall be necessary for the validity of any amended Regulations:

Provided further that they may be at any time disallowed by the Secretary of State, without prejudice, however, to the validity of anything done previously to such disallowance being made known in Mauritius or any Dependency in which such thing has been done, in the same way as the Regulations disallowed were made known.

PART V—EVIDENCE

CHAPTER I

GENERAL PROVISIONS AS TO EVIDENCE.

Interpretation.

161. In this part of this Ordinance—

"evidence" includes testimony upon oath or solemn affirmation given *viva voce* or by affidavit in writing and unsworn personal answers of parties to trials.

"trial" includes any enquiry, hearing or other proceeding in any Court of Justice or before any person having by law or by consent of parties authority to hear, receive or examine evidence.

English law of evidence to be followed.

162. Except where it is otherwise provided by special laws now in force in the Colony or hereafter to be enacted, the English law of evidence for the time being shall prevail and be applied in all Courts of the Colony.

No exclusion of evidence by reason of relationship or interest.

163. No person shall, except as hereinafter provided, be excluded or excused from giving evidence at any trial by reason of such person being a party to or having an interest in the event of such trial or by reason of the relationship by marriage or otherwise of such person to any party to, or person having an interest in the event of, such trial.

Saving clause as to accused person and as to husband or wife of accused person.

164. Nothing in this part of this Ordinance contained shall render any person charged with having committed an offence punishable by law, or the husband or wife of such person, a competent witness at the trial of such person for such offence before any Court of criminal jurisdiction, except in cases wherein the offence is charged to have been committed against the person or property or conjugal rights of the husband or wife of the accused, in which cases such husband or wife shall be a competent and compellable witness.

Saving clause as to questions tending to incriminate.

165. Nothing in this chapter shall render any person (other than a bankrupt examined before any Court or Judge under any law relating to bankruptcy) compellable to answer any question the answer to which would tend to expose him to prosecution for an offence punishable by law, or shall render any person compellable to answer the question whether he has or has not committed adultery, provided always that if any person shall have stated voluntarily as a witness that he has or has not committed adultery he may be further examined or cross-examined upon such statement.

Oral evidence to prove occupation of immovable property.

166. In any claim to rent or indemnity for the occupation of immovable property, oral evidence shall, when a lease is denied and is not completely established by writing, be admissible to prove or disprove the occupation and the amount or payment of the indemnity; and the party suing shall be entitled to such indemnity although it may result from the oral evidence given that the occupation existed under a lease :

Provided that such claim for indemnity shall be barred by one year's prescription.

And provided that nothing in this section contained shall alter any law by virtue of which the possessor of immovable property is entitled to retain the fruits thereof and to make them his own.

Examination on *Faits et Articles.*

167. Whenever a party to a suit is called upon to give his unsworn personal answers, he may be examined as an adverse witness by the party calling him and afterwards examined on his own behalf, but only as to matters arising out of the examination made by the party calling him ; and he may then be re-examined touching any question put to him on his behalf.

Insufficiency of notices not to exclude evidence.

168. Whenever the Crown or any other party to a trial is required by any law or rule of Court to file a list of witnessses or give a notice of facts, if at the trial witnesses be tendered whose names have not been included in such list, or who have not been sufficiently described therein, or if evidence be tendered of a fact omitted from or not sufficiently set out in such notice of facts, or if such list or notice shall not have been filed or given within the time fixed by law, it shall not be lawful for the Court to reject the proof of such facts or refuse the witnesses offered merely on the ground that such notice of facts, list or description of witnesses has not been served in time, provided the Court is satisfied that there has been no *mala fides*, but the Court shall be at liberty to postpone the trial with such terms as to costs, if any, as to the Court may seem just; provided that the Crown shall not be condemned in costs in any criminal trial.

Crown need not file list of witnesses in reply.

169. It shall not be necessary for the Crown to file any list of witnesses to be called in reply to witnesses for the defendant in any criminal trial, but when the Court shall call any witnesses in reply it shall be lawful for the Court to allow the defendant to produce further evidence to rebut the witnesses heard in reply.

Copies of public documents admissible.

170. At any trial, the contents of any record, book, deed, map, plan or other document in the official custody of the Supreme Court, the Conservator of Mortgages, of any Government department, of any District Court, or of any notary may be proved by means of a copy or extract certified under the hand of the Registrar of the Supreme Court, the Conservator of Mortgages, the chief clerk or head of such department, the district clerk, or such notary as the case may be, to be a true copy or extract. Such copy shall be admissible in evidence at any trial to the same extent, and in the same manner as the original would but for this Ordinance be admissible. Certificates that such copies or extracts are true and purporting to be signed by the Registrar of the Supreme Court or other person aforesaid shall, in the absence of proof to the contrary, be held to have been so signed.

Custodians of public documents not to be summoned as witnesses except in certain cases.

171. No person having the official custody of such original documents as in the preceding section mentioned shall be subpœnaed or summoned to produce the same, nor shall they be admissible in evidence at any trial except upon the order of a Judge of the Supreme Court. Such order shall only be made when it shall appear to the Judge that the authenticity of the document itself is in question, or that the proof sought to be given cannot be given by means of a copy or extract, and that the proof of such authenticity or such proof sought to be given is material to the matter at issue, and in every such case the same fee shall, in addition to the allowance to be paid for the attendance of the person so subpœnaed or summoned, be charged for the production of such document as would have been payable for a copy or extract :

Provided always that any record of any Court shall be admissible in evidence in the Court to which its custody belongs to the same extent and in the same manner as it would have been had this section not been enacted.

Privilege not affected.

172. Nothing in this Chapter shall, except where there is an express provision to the contrary, be held in any way to affect any right to refuse to produce any document or to answer any question on the ground of privilege.

Cross examination on written statements of witness.

173.—(1) Any witness may be cross-examined at any trial as to previous statements made by him in writing or reduced into writing relative to the subject matter of the trial, without such writing being shown to him, or read; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him :

Provided that it shall be competent for the Court at any time during the trial to require the production of the writing to be used for the purposes of the trial in any way that to the Court may seem proper.

Previous statement by witnesses.

(2) It shall be competent to examine any witness who may be called in any judicial proceeding as to whether he has on any specified occasion made a statement on any matter pertaining to the issue which is different from the evidence given by him in such proceeding, and it shall be competent in the course of such proceeding to adduce evidence to prove that such witness, whether he has shown himself hostile or not, has made such different statement on the occasion specified:

Provided that nothing herein contained shall make any such statement of itself evidence of the proof of any fact or facts embodied in it.

Rogation.

174. The Supreme Court or any Judge may in any civil cause or matter, when a party or witness cannot attend before the Court through illness or other lawful impediment and where it shall appear necessary for the purposes of justice, make an order for the examination, upon oath or solemn affirmation before any person appointed to be an examiner, and at any place, of any witness or person, and may make such order as may seem proper as to notices to be given to interested parties and as to the mode in which such examination is to be conducted, and may order any deposition so taken to be filed in the Registry of the Court, and the Court may, at the hearing of such cause or matter, empower any party to any cause or matter to give such deposition in evidence therein on such terms, if any, as the Court may direct. Every examiner so appointed shall have power to administer an oath or solemn affirmation.

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Translation of evidence given in foreign tongue.

175. Whenever in any proceedings before the Supreme Court whether civil, criminal, or in bankruptcy or of any other nature whatsoever, or before any other Court, a witness or a party gives evidence in a language other than English, such evidence shall, subject to the provisions of sections 176 and 189 of this Ordinance be translated into English and shall be recorded and form part of the record.

Translation of evidence in civil cases not necessary in certain cases.

176. Whenever in any proceeding before the Supreme Court on the civil side or the Master or the Judge in Bankruptcy, a witness speaks in a language which is well known to both plaintiff and defendant as the case may be, the Judges, the Law Officers of the Crown, the Master or the Judge in Bankruptcy and the counsel engaged in the case, the examination of such witness or person may take place in such language and it shall not be necessary to translate the deposition or answers in English, except when the depositions or answers are given in Creole and such deposition or answers so given in Creole must be taken down by the Registrar or other officer of the Court.

Recording of evidence given before Supreme Court.

177.—(1) In any criminal case heard before the Supreme Court, and at every stage thereof, the presiding Judge shall, save as hereinafter provided, take down in writing the oral evidence given before the Court; and in every civil case so heard as aforesaid the Registrar or other officer of the Court performing

the duties of Registrar in Court shall, if the Presiding Judge so directs, take down in writing the oral evidence given before the Court:

Provided that, should the presiding Judge in any such criminal case find himself temporarily incapacitated from taking down such evidence, it shall be lawful for the presiding Judge to direct that such evidence shall be taken down by the Registrar, or by the officer performing the duties of Registrar in Court, or by any officer of the Court or other person whom the said presiding Judge shall consider competent, reliable, and suitable for the purpose.

(2) Before the Registrar, officer, or other person other than the presiding Judge shall take down in writing any oral evidence as aforesaid, an oath shall be tendered to and taken by such Registrar, officer, or person for the accurate and faithful recording of such oral evidence according to the true purpose and meaning thereof as aforesaid; and such oath shall be in such terms as to such presiding Judge may seem apt and sufficient:

Provided that the Registrar or officer of the Court performing the duties of Registrar in Court, who shall once have duly taken such oath shall not again be required to take such oath in respect of the same or of any subsequent case.

Inspection of property.

178. In any cause or matter it shall be lawful for the Court, on the application of either party, or on its own motion to make such order for the inspection by the Court, the jury, the parties, or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute and to give such direction respecting such inspection as to the Court may seem fit.

Penalty for non-attendance of witness.

179.—(1) Without prejudice to the provisions of section 102, any person summoned to attend as a witness who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend at any subsequent sitting, shall be liable by order of the Court to a fine not exceeding one hundred rupees (Rs. 100).

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness within the local limits of the jurisdiction of such Court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the Court, be imprisoned for a term of fifteen days unless such fine is paid before the end of the said term.

(4) For good cause shown, the Court may remit or reduce any fine imposed under this section.

Penalty on giving false evidence.

180. Whoever shall give false evidence, after making an affirmation or declaration without oath, shall be liable to be prosecuted against, convicted and punished in like manner as if he had given such false evidence upon oath.

Certificates of Government Chemist or Government Veterinary Surgeon admissible in evidence.

181. In all prosecutions before any Court of Justice, a certificate under the hand of the Government Chemist or of the Government Veterinary Surgeon shall be sufficient evidence of the facts therein stated without proof of the handwriting of the said Government Chemist or Government Veterinary Surgeon, unless the accused shall require that the Government Chemist or Government Veterinary Surgeon shall be summoned at the request of the accused if the Judge or Magistrate, as the case may be, decides that the attendance of the officer is necessary.

Illness of juror.

182. A certificate under the hand of any qualified medical practitioner shall be received before the Supreme Court, in case of illness of any juror, witness, or party to a suit, or any officer of the said Court, as *prima facie* evidence, without proof of the handwriting of such medical practitioner.

This Chapter extended to the Dependencies.

183. The provisions of this Chapter shall, so far as they are applicable, extend to all trials in the Dependencies of Mauritius.

CHAPTER II

Evidence in Criminal Cases.

Competency of witnesses in criminal cases.

184. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided as follows—

(*a*) A person so charged shall not be called as a witness in pursuance of this Chapter except upon his own application;

(*b*) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution;

(*c*) The wife or husband of the person charged shall not save as in this Chapter mentioned, be called as a witness in pursuance of this Chapter, except upon the application of the person so charged;

(*d*) Nothing in this Chapter shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage

(*e*) A person charged and being a witness in pursuance of this Chapter may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(*f*) A person charged and called as a witness in pursuance of this Chapter shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such offence is admisible evidence to show that he is guilty of the offence wherewith he is then charged, or

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence;

(*g*) Every person called as a witness in pursuance of this Chapter shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence;

(*h*) Nothing in this Chapter shall affect the provisions of Article 49 of the District Courts (Criminal Jurisdiction) Ordinance, 1888, or any right of the person charged to make a statement without being sworn.

Evidence of person charged.

185. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for prosecution.

Right of reply.

186. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Evidence of husband and wife.

187.—(1) The wife or husband of a person charged with an offence against the person, property, or conjugal rights of such husband or wife or against the person or property of any child of either party to the marriage, or with an offence under Article 4 (9) of the Vagrancy Ordinance, 1889, may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Chapter shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

Application.

188. The provisions of this Chapter shall apply to all criminal proceedings, whether the same be in respect of crimes, misdemeanours or contraventions as defined in Articles 4, 5 and 6 of the Penal Code, as amended by Ordinance No. 40 of 1898, or in respect of complicity in such crimes or misdemeanours, or in respect of attempts to commit the same, when such attempts are punishable by law.

Translation of evidence in criminal cases not necessary : when.

189. Whenever at a trial before a Judge of the Supreme Court either with or without a jury, a witness speaks in a language which is well understood by the accused, by all the jurors, as well as by the Judge, the law officers of the Crown and the counsel engaged in the case, the examination of the witness may take place in such language and it shall not be necessary to translate the deposition in English.

CHAPTER III

DECLARATIONS INSTEAD OF OATH

When declaration may be made instead of oath.

190. Every person upon objecting to being sworn and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his declaration instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, which declaration shall be of the same force and effect as if he had taken the oath.

Form of declaration.

191. Every such declaration shall be as nearly as may be in the form following—

"I do solemnly, sincerely and truly declare . . ."

and shall then proceed with the words of the oath prescribed by law, omitting words of imprecation or calling to witness.

Solemn affirmation by persons of the Hindoo or Muhammadan faiths.

192.—(1) Every person of the Hindoo or Muhammadan faith within the Island of Mauritius and any of the Dependencies thereof shall make affirmation to the following effect—

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth".

(2) If any person making such affirmation shall wilfully and falsely state any matter or thing which, if the same had been sworn before this Ordinance came into operation, would have amounted to false evidence, every such offender shall be subject in all Courts to the same punishment to which persons convicted of giving false evidence are subjected by the laws in force in the Colony.

(3) Any person causing or procuring another to commit the offence defined in subsection (2) shall be subject in all Courts to the same punishment to which persons convicted of subornation of perjury were subject before this Ordinance came into operation.

(4) Without prejudice to the provisions of the preceding subsections, any party to, or witness in, any judicial proceeding, civil or criminal, who is a Hindu or Muhammadan, or any person whose religious belief prevents him from taking the ordinary oath, may be called upon (*a*) by any other party to such proceeding or (*b*) in any criminal proceeding by the prosecutor or the accused to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs and not repugnant to justice or decency : and the Court may tender such oath or affirmation, anything in subsection (1) of this section or any other law to the contrary notwithstanding.

(5) If such oath or affirmation is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it; and the Court on being satisfied that such oath or affirmation has been administered may proceed to take evidence of such party or witness accordingly.

(6) If the party or witness refuse to make the oath or solemn affirmation referred to in subsection (4) of this section he shall not be compelled to make it, but shall give evidence on making the solemn affirmation, referred to in subsection (1) of this section, or the declaration prescribed by section 190 of this Ordinance. But the Court shall record as part of the proceedings, the nature of the oath or affirmation proposed, the fact that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

(7) The provisions of subsections (4), (5) and (6) of this section shall apply to Articles 1357 to 1369 of the Civil Code.

Validity of oaths etc., not affected by error.

193. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered should have made a solemn affirmation under section 192 of this Ordinance or a declaration under sections 190 and 191 of this Ordinance, or where a solemn affirmation or a declaration has been made by a person who should have taken an oath, such error shall not affect the validity of the oath, solemn affirmation or declaration respectively, if no protest is made by the person sworn, solemnly affirmed or making the declaration, at the time such oath, solemn affirmation or declaration is made or taken.

Form of declaration in writing.

194.—Every declaration in writing shall commence "I, of , do solemnly, sincerely and truly declare"; and the form in lieu of jurat shall be "delivered at this day of , Before me ."

Penalty for swearing false affidavits.

195. Any person swearing a false affidavit whenever an affidavit is required or may be used, shall be liable to penal servitude not exceeding three years and to a fine not exceeding one thousand rupees (Rs. 1000).

The prosecution may, in any case, take place before a Magistrate or a Bench at the discretion of the Procureur General.

Swearing with uplifted hands.

196. If any person to whom an oath is administered desires to swear with uplifted hand, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

CHAPTER IV

PROOF OF IMPERIAL AND COLONIAL STATUTES

Proof of statutes of British possession.

197.—(1) Copies of Acts, ordinances and statutes passed (whether before or after the passing of this Ordinance) by the Legislature of the United Kingdom or of any British possession, and of orders, regulations, and other instruments issued or made, whether before or after the passing of this Ordinance, under the authority of any such Act, ordinance, statute, if purporting to be printed by the Government printer, shall be received in evidence by all courts of justice in the Colony and its Dependencies without any proof being given that the copies were so printed.

(2) If any person prints any copy or pretended copy of any such Act, ordinance, statute, order, regulation, or instrument which falsely purports to have been printed by the Government printer, or tenders in evidence any such copy or pretended copy which falsely purports to have been printed, knowing that it was not so printed, he shall on conviction be liable to be sentenced to imprisonment with or without hard labour for a period not exceeding twelve months.

(3) In this Section—

The expression "Government printer" means, as respects the United Kingdom or any British possession, the printer purporting to be the printer authorised to print the Acts, ordinances or statutes of the Legislature of the United Kingdom or of that possession, or otherwise to be the King's printer of Acts of Parliament or the Government printer of that possession.

The expression "British possession" means any part of His Majesty's dominions exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local Legislature, includes both all parts under the central Legislature and each part under a local Legislature.

The expression also includes any place or British protectorate to which His Majesty may by Order-in-Council extend the Evidence (Colonial Statutes) Act, 1907, of the United Kingdom—7 Edw. 7 Chap. 16,—and where so extended this Ordinance shall apply as if such place or British protectorate were a British possession.

PART VI—RULES OF COURT AND REPEALS

Power of making Rules of Court.

198.—(1) The Judges of the Supreme Court shall have power, save where otherwise specially provided, and after consulting the Advisory Rules Committee, to make Rules of Court not inconsistent with the provisions of this Ordinance, for carrying this Ordinance into effect; and in particular, but without prejudice to the generality of the foregoing provision, for all or any of the following matters—

(*a*) For regulating and prescribing the procedure, including the method of pleading, and the practice to be followed in the Supreme Court, and in the District Courts in all civil causes and matters whatsoever in or with respect to which those Courts respectively have for the time being jurisdiction, and any matters incidental to or relating to any such procedure or practice.

(*b*) For regulating and prescribing the procedure in civil appeals from any Court or person to the Supreme Court and the procedure in connection with the transfer of any civil proceedings from a Magistrate's Court to the Supreme Court or from the Supreme Court to the Magistrate's Court;

(*c*) For regulating the sittings of the Supreme Court and other Courts in the exercise of their civil jurisdiction.

(*d*) For regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given, in any civil proceeding or in any civil application in connection with or at any stage of any proceedings;

(*e*) For prescribing forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of the Courts.

(*f*) Any other matter connected with the practice and procedure of the Courts.

(2) There shall be an Advisory Rules Committee consisting of the Procureur General, and one barrister, one attorney and one notary who shall be of ten years standing in their profession, who shall be selected by the Chief Justice and who shall hold office for one year from the date of their nomination, to advise the Judges of the Supreme Court on the making of Rules of Court.

(3) Rules made as in subsection (1) shall be laid as soon as conveniently may be before the Council of Government and if a resolution is passed within forty days of their being laid that any such rule shall be annulled, such rule shall thenceforth be void, but without prejudice to anything done thereunder.

Repeal and savings.

199.—(1) The enactments set out in the Schedule to this Ordinance shall be repealed to the extent specified in that Schedule :

Provided that nothing in this repeal shall affect any Order-in-Council, rule, order, or regulation made, commission issued, direction given, or thing done, under any enactments repealed by this Ordinance, or deemed to have been made, issued, given or done respectively under any such enactment, and every such Order-in-Council, rule, order or regulation, commission or direction shall continue in force, and, so far as it could have effect, as if made, issued, or given under this Ordinance.

(2) Any person holding office or serving, or deemed to be serving under any enactment repealed by this Ordinance, shall continue in office or service as if he had beeen appointed under this Ordinance.

(3) References in any such enactment or document to the Supreme Court constituted under Ordinance No. 2 of 1850 shall be construed under this Ordinance, and any act done or proceedings taken in respect of any cause or matter whatsoever before the commencement of this Ordinance in the Supreme Court constituted under Ordinance No. 2 of 1850, shall be deemed to have been done or taken in the Supreme Court constituted under this Ordinance.

(4) Any proceedings pending at the time of the coming into force of this Ordinance in any Court constituted under any of the Ordinances repealed by subsection (1) shall be deemed to be pending in the Court constituted under this Ordinance which would have had jurisdiction over the same if they had been commenced therein after the coming into force of this Ordinance, and such proceedings shall, from and after that time, be regulated by the provisions of this Ordinance relating to such Court, so far as the nature and circumstances of each case admits, as though they had been begun therein.

Commencement of Ordinance.

200. This Ordinance shall come into force on a date to be fixed by Proclamation.

7/3/45

P.M. 5/45

SCHEDULE

ENACTMENTS REPEALED

The enactments set out in the Schedule below are repealed to the extent shown therein.

Title of Enactment	*Extent of Repeal*
Arrêté du 19 Fructidor, An XIII.	The unrepealed portion thereof.
Ordonnance No. 60 du 17 Février, 1830.	The unrepealed portion thereof.
Ordinance No. 12 of 1835	... The whole Ordinance.
Ordinance No. 18 of 1842	... The unrepealed portion thereof.
Ordinance No. 2 of 1850	... The unrepealed portion thereof.
Ordinance No. 10 of 1850	... The unrepealed portion thereof.
Ordinance No. 14 of 1853	... The whole Ordinance.
Ordinance No. 24 of 1855	... The unrepealed portion thereof.
Ordinance No. 16 of 1856	... The whole Ordinance.
Ordinance No. 12 of 1857	... The whole Ordinance.
Ordinance No. 9 of 1870	... The whole Ordinance.
Ordinance No. 15 of 1871	... The unrepealed portion thereof.
Ordinance No. 11 of 1873	... The whole Ordinance.
Ordinance No. 7 of 1880	... Article 1 thereof.
Ordinance No. 3 of 1881	... The whole Ordinance.
Ordinance No. 15 of 1881	... The whole Ordinance.
Ordinance No. 21 of 1881	... The whole Ordinance.
Ordinance No. 5 of 1883	... The whole Ordinance.
Ordinance No. 5 of 1884	... The whole Ordinance.
Ordinance No. 17 of 1884	... The whole Ordinance.
Ordinance No. 21 of 1888	... The whole Ordinance.
Ordinance No. 22 of 1888	... Articles 3, 5, 6, 7, 8, 9, 10, 11, 12, 24, 48, 49, 50 and 52.
Ordinance No. 23 of 1888	... Articles 31(1), 64, 65, 66, 67, 68, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 122, 123, 124, 125, 126, 127, 128, 129.
Ordinance No. 9 of 1890	... Articles 3 and 11.
Ordinance No. 29 of 1891	... The whole Ordinance.
Ordinance No. 35 of 1898	... Articles 13 and 14.
Ordinance No. 4 of 1899	... The whole Ordinance.
Ordinance No. 24 of 1899	... The whole Ordinance.
Ordinance No. 28 of 1899	... The whole Ordinance.
Ordinance No. 61 of 1898–99	... The whole Ordinance.
Ordinance No. 10 of 1903	... The whole Ordinance.
Ordinance No. 4 of 1904	... Articles, 3, 4 and 8.
Ordinance No. 22 of 1904	... The whole Ordinance.
Ordinance No. 9 of 1908	... The whole Ordinance.
Ordinance No. 30 of 1909	... The whole Ordinance.
Ordinance No. 3 of 1911	... The whole Ordinance.
Ordinance No. 5 of 1912	... The whole Ordinance.
Ordinance No. 34 of 1912	... The whole Ordinance.
Ordinance No. 36 of 1912	... The whole Ordinance.
Ordinance No. 23 of 1913	... The whole Ordinance.
Ordinance No. 43 of 1913	... The whole Ordinance.
Ordinance No. 7 of 1915	... The whole Ordinance.
Ordinance No. 3 of 1923	... Articles 2, 3 and 5.
Ordinance No. 9 of 1936	... The whole Ordinance.
Code of Civil Procedure	... Articles 378–396.

Annex 8

Mauritius (Legislative Council) Order in Council, 1947

MAURITIUS

THE MAURITIUS (LEGISLATIVE COUNCIL) ORDER IN COUNCIL, 1947

AT THE COURT AT BUCKINGHAM PALACE

The 19th day of December, 1947

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS by the Mauritius Letters Patent, 1947, (hereinafter called " the Letters Patent of 1947 ") it is provided that the Council of Government constituted by the Letters Patent mentioned in the First Schedule to the Letters Patent of 1947 shall cease to exist, and that, in place thereof, there shall be such Legislative Council in and for the Colony of Mauritius as may be constituted by any Order of His Majesty in Council, with such functions as may be prescribed by any such Order:

AND WHEREAS it is expedient to make provision accordingly for the constitution and functions of a Legislative Council for the Colony of Mauritius:

NOW, THEREFORE, His Majesty, in the exercise of the powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows—

PART I

Preliminary

Interpretation.

1.—(1) In this Order and the Schedules, unless the context otherwise requires—

" the appointed day " means the day appointed under Article 2 of the Letters Patent of 1947 ;

" the Colony " means the Island of Mauritius (including the small islands adjacent thereto) and the Dependencies of Mauritius ;

" the Council " means the Legislative Council of the Colony constituted by this Order ;

" election " means the election of Elected Members and " elector " and " electoral register " have corresponding meanings ;

" the Council of Government " means the Council of Government constituted by the existing Letters Patent ;

" the existing Letters Patent " means the Letters Patent mentioned in the First Schedule to the Letters Patent of 1947 ;

" the Executive Council " means the Executive Council constituted by the Letters Patent of 1947, or any Letters Patent thereafter amending, or substituted for, those Letters Patent ;

" the *Gazette* " means the *Government Gazette* of the Colony of Mauritius ;

" the Governor " means the Governor and Commander-in-Chief of the Colony and includes the officer for the time beng administering the Government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy ;

" the Governor in Council " means the Governor acting with the advice of the Executive Council, but not necessarily in accordance with that advice nor necessarily in such Council assembled ;

" Member " means a Member of the Council and " Nominated Member," " Elected Member " and " Temporary Member " mean, respectively, a Nominated, an Elected Member and a Temporary Member of the Council ;

" public office " means, subject to the provisions of sub-section (5) of this section, any office of emolument under the Crown in the Colony or under a Municipal Corporation within the Colony ;

" the Public Seal " means the Public Seal of the Colony ;

" session " means the meetings of the Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without being prorogued ;

" sitting " means a period during which the Council is sitting continuously without adjournment, and includes any period during which the Council is in Committee ;

" Vice-President " means the Vice-President of the Council.

(2) The rules set out in the First Schedule to this Order shall apply for the interpretation of the expressions " ordinarily resident " and "ordinarily resided " in sections 16 and 17 of this Order.

(3) Where in this Order reference is made to any public officer by the term designating his office, such reference shall be construed as a reference to the officer for the time being lawfully discharging the functions of that office.

(4) All references in this Order to His Majesty's dominions shall be construed as including references to all territories under His Majesty's protection or in which His Majesty has for the time being jurisdiction.

(5)—*(a)* For the purposes of this Order a person shall not be deemed to hold an office of emolument under the Crown or under a Municipal Corporation by reason only that he—

(i) is in receipt of a pension or other like allowance in respect of service under the Crown or under a Municipal Corporation ; or

(ii) is a Member of the Council ; or

(iii) is the Mayor of, or a Member of the Council of, a Municipal Corporation, or the Standing Counsel or the Attorney of a Municipal Corporation.

(b) If it shall be declared by any law for the time being in force in the Colony that an office shall be deemed not to be an office of emolument under the Crown or under a Municipal Corporation for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted therein.

(6) Save as is in this Order otherwise provided, or required by the context, the Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament. 52 and 53 Vict. C. 63.

2. This Order may be cited as the Mauritius (Legislative Council) Order in Council, 1947. It shall be published in the *Gazette* and, save as otherwise expressly provided in this Order, shall come into operation on the appointed day. Short title and commencement.

PART II

Constitution of the Legislative Council

3. There shall be a Legislative Council in and for the Colony constituted in accordance with the provisions of this Order. Establishment of Legislative Council.

4. The Council shall consist of the Governor as President, three *ex officio* Members, twelve Nominated Members and nineteen Elected Members. Constition of Legislative Council.

5. The *ex officio* Members shall be the Colonial Secretary, the Procureur and Advocate General and the Financial Secretary. Ex-officio members.

6. The Nominated Members shall be appointed by the Governor by Instrument under the Public Seal in pursuance of His Majesty's instructions through a Secretary of State. Nominated members.

7. The Elected Members shall be persons elected in accordance with the provisions of this Order. Elected members.

8. Subject to the provisions of section 9 of this Order, any person, who is qualified to be registered as an elector under the provisions of this Order and who is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council, shall be qualified to be appointed as a Nominated Member or elected as an Elected Member and no other person shall be qualified to be so appointed or elected or, having been so appointed or elected, shall sit or vote in the Council. Qualifications for Nominated and Elected Membership.

9. No person shall be qualified to be appointed as a Nominated Member or elected as an Elected Member or, having been so appointed or elected, shall sit or vote in the Council who— Disqualifications for Nominated and Elected Membership.

(a) is the holder of any public office ; or

(b)—(i) in the case of a Nominated Member, is a party to, or a member of a firm or a director or manager of a company which is a party to, any subsisting contract with the Government of the Colony for on account of the public service and has not disclosed to the Governor the nature of such contract and his interest therein ; or

(ii) in the case of an Elected Member, is a party to, or a member of a firm or a director or manager of a company which is a party to, any subsisting contract with the Government of the Colony for or on account of the public service and has not published within one month before the day of election, in the *Gazette* and in a newspaper circulating in the electoral district for which he is a candidate, a notice setting out the nature of such contract and his interest therein ; or

(c) is an undischarged bankrupt, having been declared a bankrupt under any law in force in any part of His Majesty's dominions, or has obtained the advantage of *cessio bonorum* in the Colony ; or

(d) is disqualified from practising as a legal or medical practitioner in any part of His Majesty's dominions by the order of any competent authority ; or

(e) in the case of an Elected Member, is disqualified for election by any law for the time being in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election ; or

(ii) any responsibility for the compilation or revision of any electoral register ; or

(f) is disqualified for membership of the Council by any law for the time being in force in the Colony relating to offences connected with elections.

10.—(1) Subject to the provisions of this Order, every Nominated Member shall hold his seat in the Council during His Majesty's pleasure. Tenure of Office.

(2) Every Nominated or Elected Member shall in any case cease to be a Member at the next dissolution of the Council after his appointment or election, or previously thereto if his seat shall become vacant under the provisions of this Order.

(3) The seat of a Member (other than an *ex-officio* Member) shall become vacant—

(a) upon his death ; or

(b) if, being a Nominated Member, he shall without the leave of the Governor previously obtained, or, being an Elected Member, he shall without leave of the Council previously obtained, be absent from the sittings of the Council for a continuous period of three months during any session thereof ; or

(c) if he shall cease to be qualified to be registered as an elector under the provisions of this Order ; or

(d) if he shall do, concur in, or adopt, any act done with the intention that he shall become the subject or citizen of any foreign State or Power ; or

(e) if he shall be sentenced by a competent court, in any part of His Majesty's dominions, to death or to imprisonment (by whatever name called) for a period exceeding twelve months ; or

(f) if, without the approval of the Governor, he shall become a party to, or any firm of which he is a member or any company of which he is a director or manager shall become a party to, any contract with the Government of the Colony for or on account of the public service ; or if, without such approval as aforesaid, he shall become a member of a firm, or a director or manager of a company, which is a party to any subsisting contract as aforesaid ; or

(g) if he shall be declared bankrupt under any law in force in any part of His Majesty's dominions, or shall obtain the advantage of *cessio bonorum* in the Colony ; or

(h) if, being a Nominated Member, he shall become an Elected Member ; or

(i) if, being a Nominated Member, he shall be appointed permanently to any public office ; or

(j) if, being an Elected Member he shall be appointed to, or to act in, any public office ; or

(k) if he shall become subject to any of the disqualifications mentioned in paragraphs *(d)*, *(e)* and *(f)* of Section 9 of this Order.

(4) If a Nominated Member shall be appointed temporarily to, or to act in, any public office, he shall not sit or vote in the Council so long as he continues to hold, or to act in, that office.

(5) Any person vacating a seat as a Member may, if qualified, be again appointed or elected as a Member from time to time.

(6) The Governor may, by Instrument under the Public Seal, declare any Nominated Member to be incapable of discharging his functions as a Member, and thereupon such Member shall not sit or vote in the Council until he is declared, in manner aforesaid, to be again capable of discharging his said functions.

Decision of questions as to Membership.

11. Subject to the provisions of this Order—

(a) all questions which may arise as to the right of any person to be or remain a Nominated Member shall be referred to, and determined by, the Governor in Council.

(b) all questions which may arise as to the right of any person to be or remain an Elected Member shall be determined by the Supreme Court of the Colony in accordance with the provisions of any law for the time being in force in the Colony.

Temporary Appointment.

12.—(1) Whenever there shall be a vacancy in the number of persons sitting in the Council as *ex-officio* or Nominated Members by reason of the fact that—

(a) one person is lawfully discharging the functions of more than one of the three offices referred to in section 5 of this Order ; or

(b) a Nominated Member is lawfully discharging the functions of any of the three offices referred to in section 5 of this Order ; or

(c) no person is lawfully discharging the functions of any one of those offices ; or

(d) the seat of a Nominated Member is vacant for any cause other than the dissolution of the Council ; or

(e) a Nominated Member is unable to sit or vote in the Council in consequence of a declaration by the Governor, as provided in this Order, that he is incapable of discharging his functions as a Member ; or

(f) an *ex-officio* or Nominated Member is absent from the Colony ; or

(g) a Nominated Member is unable to sit or vote in the Council in consequence of his having been appointed temporarily to, or to act in, any public office ;

the Governor may, by Instrument under the Public Seal, appoint a person to be a Temporary Member for the period of such vacancy.

(2) If the vacancy is in the number of persons sitting in the Council as *ex-officio* Members, the person appointed shall be a person holding office of emolument under the Crown in the Colony and if the vacancy is in the number of persons sitting in the Council as Nominated Members, the person appointed shall be a person qualified for appointment as a Nominated Member.

(3) If a person is appointed under this section to be a Temporary Member to fill a vacancy in the number of persons sitting in the Council as *ex-officio* Members then, so long as his appointment shall subsist, the provisions of this Order shall, subject to the provisions of this section, apply in relation to him as if he were an *ex-officio* Member:

Provided that the provisions of paragraph (a) of section 11 of this Order shall apply in relation to any such person as if he were a Nominated Member.

(4) If a person is appointed under this section to be a Temporary Member to fill a vacancy in the number of persons sitting in the Council as Nominated Members, then, so long as his appointment shall subsist, he shall be to all intents and purposes a Nominated Member and, subject to the provisions of this section, the provisions of section 10 of this Order shall have affect accordingly.

(5) The Governor shall forthwith report every temporary appointment made under this section to His Majesty through a Secretary of State and such appointment may (without prejudice to anything done by virtue thereof) be revoked by the Governor by Instrument under the Public Seal.

(6) A temporary appointment made under this section shall cease to have effect on notification by the Governor to the person appointed of revocation by the Governor, or on supersession of the appointment by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

Extraordinary Members.

13.—(1) The Governor may summon to any meeting of the Council the person for the time being performing the functions of Head of any department of the Colony or any Officer for the time being holding the appointment of, or acting as, Officer Commanding His Majesty's Naval Military or Air Forces, respectively, in the Colony notwithstanding that such person may not be a Member of the Council, when, in the opinion of the Governor, the business before the Council renders the presence of such person desirable.

(2) Any person so summoned shall be entitled to take part in the proceedings of the Council relating to the matter in respect of which he was summoned as if he were a Member of the Council, except that he shall not have the right to vote in the Council.

Electoral Districts.

14.—(1) For the purpose of the election of Members the Colony shall be divided into five electoral districts as follows—

(a) the Electoral District of Plaines Wilhems and Black River, which shall return six Members ;

(b) the Electoral District of Moka and Flacq, which shall return three Members ;

(c) the Electoral District of Port Louis, which shall return four Members ;

(d) the Electoral District of Grand Port and Savanne, which shall return three Members ; and

(e) the Electoral District of Pamplemousses and Rivière du Rempart, which shall return three Members.

(2) The boundaries of each electoral district shall be such as may be prescribed by, or in pursuance of, any law for the time being in force in the Colony.

Right to vote.

15.—(1) Every person who is registered as an elector in any electoral district shall, while so registered, be entitled to vote at any election for that district and no person shall vote at any election for any electoral district who is not registered as an elector in that district:

Provided that nothing in this subsection shall entitle any person to vote at any election if he is prohibited from so voting, by any law for the time being in force in the Colony, by reason of his being a returning officer.

(2) No person shall be registered as an elector in any electoral district who is not qualified to be so registered under the provisions of this Order.

Qualifications of electors.

16.—(1) Subject to the provisions of section 17 of this Order, any person shall be qualified to be registered as an elector in any year in any electoral district if on the first day of July in that year he—

(a) is ordinarily resident in that district and can speak and can read and write simple sentences in, and can sign his name in, any of the languages mentioned in the Second Schedule to this Order to the satisfaction of the officer charged with the duty of registering electors in that district, except so far as that officer is satisfied that he is unable so to do through blindness or other physical cause ; or

(b) is ordinarily resident in that district and has served at any time for a period of at least twelve months in the armed forces of the Crown and is either still so serving or has obtained, on discharge from the said forces, a certificate showing his conduct during such service to have been satisfactory ; or

(c) occupies (as owner or tenant), and has for the immediate preceding six months so occupied, business premises in that district:

Provided that:

(i) no person shall be registered as an elector in any one electoral district in respect of more than one of the qualifications specified in paragraphs (a), (b) and (c), respectively, of this subsection ;

(ii) no person shall be registered as an elector in more than two electoral districts in all ;

(iii) no person shall be registered as an elector in two electoral districts save in the one district in respect of the qualification specified in paragraph (c), and in the other district in respect either of the qualification specified in paragraph (a) or of the qualification specified in paragraph (b), of this subsection.

(2)—(a) For the purposes of paragraph (b) of subsection (1) of this section conduct described as fair shall be deemed to have been satisfactory.

(b) In this section the expression " business premises " means any premises (that is to say any building or part of a building, or any place or space which can be so defined as to enable it to be occupied separately) of the annual rental value of not less than two hundred and forty rupees occupied for the purpose of the business, profession or trade of the person to be registered.

(c) Where business premises are in the joint occupation of two or more persons each of the joint occupiers shall, for the purposes of this section, be treated as occupying the premises:

Provided that—

(i) the annual rental value of the premises is not less than the amount produced by multiplying two hundred and forty rupees by the number of the joint occupiers ;

(ii) not more than two joint occupiers shall be entitled to be registered in respect of the same premises, unless they are *bona fide* engaged as partners carrying on their business, profession or trade on the premises.

Disqualifications of Electors.

17. No person shall be qualified to be registered as an elector in any year if he—

(a) is not a British subject or is by virtue of his own act under any acknowledgement of allegiance, obedience, or adherence to a foreign State or Power ; or

(b) was less than twenty-one years of age on the first day of July in that year ; or

(c) has not ordinarily resided in the Colony for the two years immediately preceding the first day of July in that year ; or

(d) has been sentenced by any Court in His Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon ; or

(e) is certified to be insane under any law for the time being in force in the Colony ; or

(f) is disqualified for registration by any law for the time being in force in the Colony relating to offences connected with elections.

Laws as to Elections, etc.

18. Subject to the provisions of the Order, provision may be made by, or in pursuance of, any law enacted under this Order for the following matters, that is to say—

(a) the registration of electors ;

(b) the ascertainment of the qualifications of electors and of candidates for election ;

(c) the holding of elections ;

(d) the definition and trial of offences in relation to elections and the imposition of penalties therefor including disqualification for membership of the Council or for registration as an elector of any person concerned in any such offence.

Vice-President of the Council.

19.—(1) The Council shall, before proceeding to the despatch of any other business (except the taking of the oath of allegiance), at its first sitting after the appointed day and thereafter at its first sitting after every dissolution of the Council, elect a Nominated or Elected Member to be Vice-President of the Council.

(2) A Member holding office as Vice-President shall, unless he earlier resigns his office by writing under his hand addressed to the Governor or ceases to be a Member, vacate his office on the dissolution of the Council.

(3) Whenever the office of Vice-President shall become vacant otherwise than as the result of a dissolution of the Council, the Council shall, at its first or second sitting after the occurrence of the vacancy, elect another Nominated or Elected Member to be Vice-President.

Presiding in Legislative Council.

20. The Governor if present, or, in the absence of the Governor, the Vice-President, or, in the absence of the Vice-President, the Member present who stands first in the order of precedence, shall preside at the sittings of the Council.

Precedence of Members.

21.—(1) The Vice-President shall take precedence next after the Governor, and the other Members of the Council shall take precedence after the Vice-President and among themselves as His Majesty may specially assign, or, if precedence be not so assigned, as follows—

First, the *ex-officio* Members in the order in which they are mentioned in section 5 of this Order ;

Secondly, any other Members who are Members of the Executive Council according to their seniority therein ;

Thirdly, the remaining Members according to the length of time for which they have been continuously Members, Members who have been continuously Members for the same length of time taking precedence according to the alphabetical order of their names.

(2) For the purposes of the preceding subsection—

(a) in ascertaining the length of time for which any person shall have been continuously a Member—

(i) no account shall be taken of any interval between the vacation by that person of his seat in the Council in consequence of a dissolution of the Council and the date of his appointment or re-appointment or election or re-election to fill a vacancy in the Council caused by that dissolution ; and

(ii) if any person, having been for any period immediately before the appointed day a Member of the Council of Government constituted by the existing Letters Patent, is appointed or elected as a Member by virtue of the first appointments or elections to the Council after the appointed day, he shall be deemed to have been a Member during the said period ; and no account shall be taken of any interval between the end of that period and the date upon which he is so appointed or elected as a Member, or of any interval in his Membership of the said Council of Government necessarily following a dissolution of that Council of Government ;

(b) when the Council is dissolved, Nominated Members appointed to fill vacancies caused by such dissolution shall be deemed to have been appointed, and Members elected at the ensuing general election shall be deemed to have been elected by virtue of that election, on the date of the return of the first writ at such election ;

(c) the provisions of paragraph *(b)* of this subsection shall apply to Members appointed or elected by virtue of the first appointments and elections to the Council after the appointed day as if such appointments and elections were consequent upon a dissolution of the Council.

Filling of Vacancies.

22.—(1) Whenever the seat of an Elected Member becomes vacant, a fresh election shall be held to fill the vacancy in accordance with the provisions of this Order.

(2) Whenever the seat of a Nominated Member becomes vacant, the vacancy shall be filled by appointment by the Governor in accordance with the provisions of this Order.

PART III

Legislation and Procedure in Legislative Council

Power to make Laws.

23. Subject to the provisions of this Order, it shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace order and good government of the Colony.

Voting.

24.—(1) Save as otherwise provided in this Order, all questions proposed for decision in the Council shall be determined by a majority of the votes of the Members present and voting.

(2) The Governor or other Member presiding shall not vote unless the votes of the other Members shall be equally divided, in which case he shall have a casting vote.

(3) If, upon any question before the Council, the votes of the other members are equally divided and the Governor or other Member presiding does not exercise his casting vote, the motion shall be declared to be lost.

Council may transact business notwithstanding Vacancies.

25. The Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the Council or otherwise took part in the proceedings.

Quorum.

26. No business except that of adjournment shall be transacted if objection is taken by any Member present that there are less than twelve Members present besides the Governor or other Member presiding.

Governor's reserved power.

27.—(1) If the Governor shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as a component part of the British Empire, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer) that any Bill introduced, or any motion proposed, in the Council should have effect, then, if the Council fail to pass such a Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor, at any time in his discretion, may, notwithstanding any provisions of this Order or of any Standing Orders of the Council, declare that such Bill or motion shall have effect as if it had been passed by the Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been moved or proposed in the Council or in any Committee thereof ; and thereupon the said Bill or motion shall have effect as if it had been so passed, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall apply accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he shall make any such declaration and the reasons therefor.

(3) If any Member objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such Member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by a Secretary of State and the Governor shall cause notice of such revocation to be published in the *Gazette ;* and from the date of such notification any motion, which shall have had effect by virtue of the declaration revoked, shall cease to have effect and the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

52 & 53 Vict. c. 63.

Assent to Bills.

28.—(1) No Bill shall become a law until either the Governor shall have assented thereto in His Majesty's name and on His Majesty's behalf and shall have signed the same in token of such assent, or His Majesty shall have given his assent thereto through a Secretary of State.

(2) When a Bill is presented to the Governor for his assent, he shall, according to his discretion but subject to the provisions of this Order and of any Instructions addressed to him under His Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, thereto, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor shall reserve for the signification of His Majesty's pleasure any Bill by which any provision of this Order is revoked or amended or which is in any way repugnant to, or inconsistent with, the provisions of this Order, unless he shall have been authorized by a Secretary of State to assent thereto.

(3) A law assented to by the Governor shall come into operation on the day on which such assent shall be given, or if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

(4) A Bill reserved for the signification of His Majesty's pleasure shall become a law as soon as His Majesty shall have given His assent thereto through a Secretary of State and the Governor shall have signified such assent by Proclamation published in the *Gazette*. Every such law shall come into operation on the date of such Proclamation or, if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

Disallowance of Laws.

29.—(1) Any law to which the Governor shall have given his assent may be disallowed by His Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by His Majesty, the Governor shall cause notice of such disallowance to be published in the *Gazette*.

(3) Every law so disallowed shall cease to have effect as soon as notice of such disallowance shall be published as aforesaid and thereupon any enactment repealed or amended by, or in pursuance of, the law disallowed shall have effect as if such law had not been made. Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an Act of Parliament. 52 & 53 Vict. c. 63.

30. Subject to the provisions of this Order, the Governor and the Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under His Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf. Royal Instructions

31.—(1) Subject to the provisions of this Order and of any Instructions under His Majesty's Sign Manual and Signet, the Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for assent, but no such Standing Orders shall have effect until they shall have been approved by the Governor. Standing Orders.

(2) The first Standing Orders of the Council shall be made by the Governor and may be amended or revoked by the Council under subsection (1) of this section.

32. The official language of the Council shall be English but any Member may address the chair in French. Official language.

33. Subject to the provisions of this Order and of the Standing Orders of the Council, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to Standing Orders: Introduction of Bills, etc.

Provided that, except with the recommendation or consent of the Governor signified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition, which in the opinion of the Governor or other Member presiding, would—

(a) dispose of or charge any public revenue or public funds of the Colony, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty ; or

(b) suspend the Standing Orders of the Council or any of them.

34. Except for the purpose of enabling this section to be complied with, no Member of the Council shall sit or vote therein until he shall have taken and subscribed before the Governor, or some person authorized by the Governor in that behalf, the Oath of Allegiance in the form set out in the Third Schedule to this Order: Oath of Allegiance.

Provided that every person authorized by the law of the Colony to make an affirmation instead of taking an oath in legal proceedings may make such affirmation in like terms instead of the said oath.

35.—(1) The sittings of the Council shall be held at such times and places as the Governor shall from time to time appoint by Proclamation published in the *Gazette*. There shall be a session of the Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one session and the first sitting in the next session. Sittings and Sessions.

(2) The first session of the Council shall commence within six months of the appointed day.

36.—(1) The Governor may at any time, by Proclamation published in the *Gazette*, prorogue or dissolve the Council. Prorogation and dissolution.

(2) The Governor shall dissolve the Council at the expiration of five years from the date of the return of the first writ at the last preceding general election, if it shall not have been sooner dissolved.

37. There shall be a general election at such time within four months after the appointed day, and thereafter within three months after every dissolution of the Council, as the Governor shall by Proclamation published in the *Gazette* direct. General Elections.

PART IV

MISCELLANEOUS

Penalty for unqualified persons sitting or voting.

38.—(1) Any person who—

(a) having been appointed or elected a Member of the Council but not having been, at the time of such appointment or election, qualified to be so appointed or elected, shall sit or vote in the Council, or

(b) shall sit or vote in the Council after his seat thereon has become vacant or he has become disqualified from sitting or voting therein, knowing, or having reasonable grounds for knowing, that he was so disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty not exceeding five hundred rupees for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the Supreme Court of the Colony at the suit of the Procureur and Advocate General.

Provisions necessary to give effect to the Order.

39.—(1) At any time before the appointed day the Council of Government constituted by the existing Letters Patent may by laws made under those Letters Patent, and thereafter at any time before the first sitting of the Council under this Order the Governor may by Proclamation, make such provision as appears to them or to him (as the case may be) to be necessary or expedient for giving effect to the provisions of this Order and in particular and without prejudice to the generality of the foregoing power may make provision for all or any of the matters specified in section 18 of this Order ; and the expression " any law for the time being in force in the Colony ", wherever it occurs in this Order, shall include any law or Proclamation made under this subsection.

(2) It shall not be necessary for any law enacted in accordance with the provisions of subsection (1) of this section to be reserved for the signification of His Majesty's pleasure.

(3) Every Proclamation made under subsection (1) of this section shall have the force of law and may be amended, added to or revoked by further Proclamation within the period specified in that subsection.

(4) This section shall come into operation forthwith.

Emoluments.

40.—(1) The Governor and other Officers mentioned in the Fourth Schedule to this Order shall receive by way of annual emoluments the sums respectively specified therein and the said sums are hereby charged on the revenues of the Colony and shall be paid by the Accountant General out of the said revenues upon warrant directed to him under the hand of the Governor.

(2) Nothing in subsection (1) of this section shall prevent the payment to the Governor or to any of the Officers aforesaid of any greater or other sums by way of salary or other emoluments for which provision may be duly made from time to time.

(3) In this section and the Fourth Schedule to this Order the word " Governor " means the person for the time being holding the substantive appointment of Governor and Commander-in-Chief.

Removal of difficulties.

41.—(1) If any difficulty shall arise in bringing into operation any of the provisions of this Order or in giving effect to the purposes thereof, a Secretary of State may, by Order, make such provision as seems to him necessary or expedient for the purpose of removing the difficulty and may by such Order amend or add to any provision of this Order:

Provided that no Order shall be made under this section later than the first day of January, 1950.

(2) Any Order made under this section may be amended, added to, or revoked by a further Order, and may be given retrospective effect to a day not earlier than the date of this Order.

(3) This section shall come into operation forthwith.

Power reserved to His Majesty.

42.—(1) His Majesty hereby reserves to Himself, His Heirs and Successors power, with the advice of His or Their Privy Council, to amend, add to or revoke this Order as to Him or Them shall seem fit.

(2) Nothing in this Order shall affect the power of His Majesty in Council to make laws from time to time for the peace, order and good government of the Colony.

E. C. E. LEADBITTER.

FIRST SCHEDULE

Section 1.

1. Subject to the provisions of rules 2, 3, 4 and 5 of this Schedule, the question of whether a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case.

2. The place of ordinary residence of a person is, generally, that place which is the place of his habitation or home, whereto, when away therefrom, he intends to return. In particular when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where he sleeps.

3. Generally, a person's place of ordinary residence is where his family is; if he is living apart from his family, with the intent to remain so apart from it in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

4. Any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered.

5. Any person, who at any time is serving in the armed forces of the Crown, shall be deemed to be ordinarily resident during the period of such service in the place in which he so resided immediately before he entered on such service, unless he has thereafter established some other ordinary residence elsewhere.

SECOND SCHEDULE

Section 16.

English.
French.
Gujerati.
Hindustani.
Tamil.
Telegu.
Urdu.
Chinese.
The Creole Patois commonly in use in the Colony.

THIRD SCHEDULE

I, ..., do swear that I will be faithful and bear true allegiance to His Majesty King George VI, His Heirs and Successors, according to law. So help me God.

Section 34.

FOURTH SCHEDULE

Section 40.

Governor	Rupees 50,000, salary
Colonial Secretary	Rupees 24,000, salary
Procureur and Advocate-General	Rupees 20,000, salary
Financial Secretary	Rupees 20,000, salary
Governor or Officer for the time being Administering the Government	Rupees 10,000, duty allowance

By Authority: J. ELIEL FÉLIX, Acting Government Printer, 1948. 94/1/48 – 541

Annex 9

Official Records of United Nations General Assembly, Fifth Session, Third Committee, 310th Meeting, 10 November 1950, 10.45 a.m., UN Doc. A/C.3/SR.310

United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

THIRD COMMITTEE 310th

MEETING

Friday, 10 November 1950, at 10.45 a.m.

Lake Success, New York

CONTENTS

Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and A/C.3/L.76) (*continued*)

[Item 63]*

DRAFT RESOLUTION SUBMITTED BY BRAZIL, TURKEY AND THE UNITED STATES OF AMERICA (A/C.3/L.76) (*continued*)

1. Mr. NORIEGA (Mexico) noted that the revised text of the joint Afghan and Saudi Arabian amendment (A/C.3/L.88/Rev.1) to the basic text (A/C.3/L.76) no longer included a reference to the right of peoples to self-determination. Since it spoke only of the right of nations, it appeared to deal with a subject that fell within the competence of the International Law Commission, which was engaged in drafting a declaration of rights and duties of States.

2. He therefore hoped that the reference to peoples, whose right to self-determination should be protected by the covenant on human rights, would be restored.

3. Mr. BAROODI (Saudi Arabia) replied that the words "peoples and" had been deleted from the joint amendment at the suggestion of delegations which feared that their inclusion might encourage minorities within a State to ask for the right to self-determination.

4. He was, however, prepared to accept the Mexican representative's suggestion and to re-introduce those words.

5. Mr. PAZHWAK (Afghanistan) also agreed to the suggestion of the representative of Mexico. He therefore re-introduced the original text of the amendment (A/C.3/L.88), withdrawing the text contained in document A/C.3/L.88/Rev.1.

6. Mr. NORIEGA (Mexico) said that it was obvious that the joint amendment should be adopted as it stood. At the preceding meeting, the Committee had adopted the joint United States and Yugoslav amendment (A/C.3/L.101) which called on the Commission of Human Rights consistently to apply and assiduously to protect the principles and purposes of the Charter of the United Nations in drafting the covenant. There could be no doubt that the right of peoples to self-determination was one of those principles, and by adopting the joint amendment the Committee would merely be emphasizing a specific aspect of the United States and Yugoslav proposal.

7. It had been said that the covenant should be consistent with the Universal Declaration of Human Rights; but the third paragraph of the preamble to the Declaration said that human rights should be protected by the rule of law lest man should be compelled to have recourse to rebellion against tyranny and oppression. Rebellion was a collective action; to prevent it, the collective right of self-determination should be guaranteed. In addition, numerous articles of the Declaration, such as articles 1, 2, 3, 4, 12, 15, 18, 19, 21, 27 and 30, had a direct bearing on the right of peoples to self-determination.

8. It had been argued that the Third Committee was not the appropriate organ to discuss that right. He could not conceive of any organ more appropriate. The Security Council could deal with the question only if a conflict arose; and it was precisely the duty of the Third Committee to prevent conflicts on the grounds of violation of human rights. The Fourth Committee, in his view, would be competent, under Chapter XI of the Charter, to discuss the question; but a number of representatives on that Committee had stated in the past that those provisions of the Charter imposed no binding obligations on the colonial Powers. If that opinion were accepted, the question arose what Committee of the General Assembly could properly deal with the subject.

9. The pivotal point of the whole system of international economic and social co-operation was Article 55 of the Charter. That Article not only spoke of uni-

* Indicates the item number on the General Assembly agenda.

versal respect for, and observance of, human rights and fundamental freedoms for all, but specifically mentioned the principle of self-determination of peoples. Consequently the subject of self-determination was beyond any doubt within the competence of the Third Committee, as well as the Fourth Committee.

10. Furthermore, the General Assembly had on several occasions recognized the competence of the Commission on Human Rights and of the Third Committee to deal with human rights everywhere, including dependent territories. Thus, in the Standard Form for the guidance of Members in the preparation of information to be transmitted under Article 73 e of the Charter, annexed to resolution 142 (II), the General Assembly had included a section on human rights, while in its resolution 324 (IV) enjoining the Administering Authorities to further educational advancement in the Trust Territories, the General Assembly stated that discrimination on racial grounds was not in accordance with the principles of the Charter, the Trusteeship Agreements and the Universal Declaration of Human Rights.

11. The legal position of the Third Committee was consummately clear; it had not merely the right but the duty to concern itself with the right of peoples to self-determination. He therefore hoped that the joint amendment would be adopted.

12. Mr. PRATT DE MARIA (Uruguay) observed that the Committee had already indirectly sanctioned the idea contained in the joint amendment by adopting (306th meeting) the text of paragraph 2 (*b*) of the joint draft resolution which requested the Commission on Human Rights to take into consideration a number of rights set forth in the USSR proposal (A/C.3/L.96), among them the right to national self-determination. There should be no objection to laying greater emphasis on that right, which would be the only effect of the joint amendment.

13. Mr. MENON (India) warmly supported the joint amendment.

14. Individual and political rights could not be implemented if the people to whom they had been granted lived under a despotic régime. As had been recognized in article 21, paragraph 3, of the Declaration, the will of the people should be the basis of the authority of government.

15. The Charter of the United Nations laid down only general programmes and policies for the attainment of self-government. Development towards self-government was a slow and gradual process precisely because it was directed by foreign Powers and not by the people themselves. The Commission on Human Rights should certainly study, and make recommendations with respect to, the right of self-determination regarded as an actual human right, for only when that right had been assured would it be possible to hope for the effective implementation of all the other rights guaranteed in the covenant.

16. The argument that the question of self-determination would be more properly considered in connexion with the rights and duties of States was invalid, since the process of self-determination preceded, and indeed led to, the coming into being of a sovereign State.

17. Mr. PAZHWAK (Afghanistan) repeated his appeal to the Committee to consider the right of self-determination with all due objectivity.

18. In reply to the statement made by the United Kingdom representative at the 309th meeting, he said that Articles 73 b and 76 b of the United Nations Charter which the United Kingdom representative had invoked were really the best arguments in favour of the adoption of the joint amendment, since the first of those Articles enjoined Members of the United Nations to take due account of the political aspirations of the peoples of Non-Self-Governing Territories, while the second called on them to encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion. The draft covenant was obviously one of the best means of encouraging respect for those rights. The joint amendment was clearly in the spirit of the Charter and should certainly not be opposed on those grounds. If, in the United Kingdom representative's opinion, principles already in the Charter should not be included in the covenant, all the articles of the covenant might as well be eliminated; there was no good reason to make any exception of the right of peoples to self-determination.

19. The United Kingdom representative's other point had been that the Commission on Human Rights was not the proper body to deal with the question. The right of peoples to self-determination was, however, a basic human right and therefore fell within the Commission's province. Since the United Kingdom representative himself had said that, whatever its past history, the United Kingdom was anxious to achieve the very goal envisaged in the joint amendment, it was to be hoped that he would not object to a study of the question by the Commission on Human Rights.

20. He added that while self-determination was admittedly a slow and gradual process, nothing in the joint amendment indicated any desire for undue haste.

21. The arguments advanced at the 309th meeting by the French representative had largely been answered already by the Mexican representative. Mr. Pazhwak merely wished to add that the draft covenant was not limited in scope to the contents of the Universal Declaration of Human Rights. Since the Committee was entitled to give directives to the Commission on Human Rights, it could certainly recommend to the Commission that the enjoyment of human rights should be extended to the peoples of dependent territories.

22. Mr. SOUDAN (Belgium) said that at first his delegation had favoured the joint amendment, but, after hearing the arguments put forward by the representatives of Afghanistan and Saudi Arabia in its support, it had come to realize that the question was much more far-reaching than it had believed.

23. Retracing the history of the Belgian mandate to administer the Congo, he said that his country had from the start done what it could to promote the welfare and raise the standard of living of the indigenous inhabitants by abolishing slavery, spreading enlightenment and education, and by other measures calculated to lead the people towards self-government. Admittedly, there had been some abuses in the Belgian system of metropolitan and colonial government, but no country could claim to be blameless in that regard.

24. If the principle of self-determination were to be applied forthwith in such territories as the Congo, and if popular elections were held for that purpose, the people would elect chiefs who would deprive them of

many of the human rights accorded by the authorities responsible for their administration. The result would be anarchy, as the populations were not yet sufficiently advanced to decide their own fate.

25. In 1945 it had been recognized that the people of the Non-Self-Governing Territories were not yet ready for self-government and Article 73 of the Charter had been drafted accordingly. The situation had unfortunately not changed a great deal in the intervening years.

26. With regard to the question of competence, he felt that as the Commission on Human Rights was required to deal with the rights of individuals, and not of peoples or nations, it was more appropriate for the countries which were responsible, under Article 11 of the Charter, for developing the Non-Self-Governing Territories to continue to do so.

27. He had not been convinced by the argument advanced by the Mexican representative and would continue to adhere to the views expressed by the representative of France.

28. Mrs. ROOSEVELT (United States of America) said that her delegation supported the principle of self-determination, but pointed out that under the Charter of the United Nations the promotion of that principle was the responsibility of the Trusteeship Council and the Fourth Committee. It would therefore be unwise for the Third Committee to take up the matter as it was not as well equipped to deal with it as those other bodies and it would be duplicating their work.

29. For those reasons her delegation would vote against the joint amendment, although it was not opposed to it in principle.

30. Mr. TEIXEIRA SOARES (Brazil) was also unable to support the joint amendment, although agreeing with it in principle, because he felt that the covenant would not be the appropriate instrument to deal with the right of self-determination. Moreover Article 1, paragraph 2, of the Charter already spoke of respect for the principle of self-determination of people and any re-affirmation of that principle was unnecessary. In any case, although not included in the covenant, the right of self-determination would be achieved if all the other rights which had been included were applied.

31. He would abstain from voting on the joint amendment but reserved his delegation's position with regard to any recommendations submitted to the General Assembly at its sixth session.

32. Mr. LESAGE (Canada) said that, although his delegation would be the last to oppose the principle of self-determination, it would vote against the joint amendment, for the reasons already stated by the United States representative.

33. Mr. SZYMANOWSKI (Poland) supported the joint amendment whole-heartedly, as the right of self-determination constituted the source of all other fundamental human rights. That was very clearly seen in the case of his own country, which had been deprived of that right for 150 years and had in consequence been denied the full enjoyment of human rights.

34. He disagreed with the United Kingdom representative's view that the United Nations Charter contained a clear formulation of the principle of self-determination; on the contrary, the Charter made it incumbent upon the Third Committee to implement and safeguard that right in international covenants and agreements generally.

35. To the French representative's contention (309th meeting) that the joint amendment would be out of place, since the covenant dealt only with individual rights, he would reply that man was part of society and could not be dissociated from it. The right of self-determination was a right of a group of individuals in association and its exclusion from the covenant would render the whole instrument unreal.

36. Mr. LAMBROS (Greece) emphasized that the right of self-determination had been a foremost guiding principle for the Greek people ever since the Greek war of independence against the Ottoman Empire in 1821 had started a revolutionary trend of national liberation in Europe. That principle had inspired his people throughout their wars of liberation, including the one in the preceding decade, that had happily ensured their survival as a nation.

37. It was the profound belief of all Greeks, not only of those who were citizens of the Greek State, but also of those still under foreign rule, that every people and every nation should have the right to national self-determination.

38. His delegation certainly supported that principle but felt that while it was within the competence of the United Nations to define that right, it was not within the competence of the Third Committee, the Economic and Social Council or the Commission on Human Rights to do so. The right to self-determination had nothing in common with the other rights dealt with in the Third Committee, being a political right which could be exercised only collectively, as the Mexican representative had pointed out.

39. The French representative had quite rightly observed that the Universal Declaration of Human Rights did not deal with the right to self-determination, because it lay outside its scope. It should be left to the political bodies of the United Nations, assisted if desired by the International Law Commission, to supplement the relevant provisions of the United Nations Charter if necessary, and to study ways and means to ensure that the right to self-determination was implemented satisfactorily.

40. His delegation would therefore support a similar proposal if it were submitted in another Committee, but it could not do so in the Third Committee.

41. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) could not agree with the delegations which had in principle warmly espoused the right of peoples to self-determination, yet had argued that the Third Committee's competence did not extend to political questions, but only to social and cultural matters. Article 73 e of the Charter clearly showed that the two categories were inseparable.

42. The French representative had stated that the first paragraph of article 2 of the Universal Declaration of Human Rights did not cover the right to self-determination; the second paragraph of that article, however, stipulated that human rights should be enjoyed not only by all individuals but also by all countries or territories, irrespective of their political status. The

maintenance of international peace and security itself depended on the achievement of self-determination by all the dependent peoples.

43. The joint amendment contained no drastic provision; in it the Commission on Human Rights was requested merely to make a preliminary investigation of ways and means with a view to preparing recommendations. There was nothing in it that should prevent delegations which professed such hearty support of the principle involved—provided that some other committee saw to its implementation—from joining his own delegation in supporting the joint amendment.

44. Mrs. AFNAN (Iraq) scouted the Belgian representative's fears about the dire results likely to ensue if self-determination were granted to certain territories. The joint United States and Yugoslav amendment (A/C.3/L.101) adopted almost unanimously at the 309th meeting stipulated that in the drafting of the covenant account should be taken of the principles and purposes of the Charter of the United Nations. The right to self-determination was implicit in the relevant provisions of the Charter, so that the Third Committee was plainly competent to deal with it for that purpose. That right was the essence of all human rights.

45. She would support the joint amendment.

46. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) also supported the joint amendment. The guiding principle in drafting the covenant should be the equality of all nations and races in the enjoyment of the human rights set forth in it. The implementation of the rights embodied in the Declaration—inadequate though it was—hinged upon the right of the people concerned to determine their own destiny without outside interference. The proposal made by the USSR representative for the inclusion of that right (A/C.3/L.96) in the draft covenant would, in accordance with paragraph 2 (*b*) already adopted at the 306th meeting, be considered by the Commission on Human Rights, and the joint amendment submitted by the Afghan and Saudi Arabian delegations, although not entirely satisfactory, was a further step forward.

47. The argument that the right to self-determination was already embodied in the Charter was an even more cogent argument for its inclusion in the covenant. If it was not incorporated in that instrument, it was hard to see what other instrument should include it. The Third Committee was wholly competent to request its inclusion, since it was the prerequisite for the enjoyment of all other human rights. No delegation had opposed the principle as such; none should therefore object to the joint amendment.

48. Mr. SAVUT (Turkey) said that the question was not whether the right to self-determination should be recognized—undoubtedly it should be—but whether it should be included in the covenant. There were three categories of human rights. First, there were individual rights, such as those already embodied in the draft covenant. The draft covenant also included some rights which were exercised in groups, such as the right, stated in article 13, to freedom to manifest one's religion, the right of peaceful assembly, stated in article 15, and the right of association, stated in article 16. Secondly, there were the rights recognized to groups of individuals and exercised by groups of individuals, such as the rights of associations as such, or trade-union rights. Thirdly, there were the rights of nations, peoples or sovereign groups.

49. A very clear distinction should be drawn between those three categories. The draft covenant, like the Declaration, dealt with individual rights. The right to self-determination clearly fell outside that category. On the other hand, the Commission on Human Rights was not competent to deal with that particular right.

50. A further objection to the joint amendment was that in parliamentary parlance the phrase "ways and means" generally meant financial arrangements.

51. His delegation would, therefore, vote against the joint amendment (A/C.3/L.88), not because it was opposed to recognition of the right to self-determination but because it considered that that right fell outside the scope of the covenant and outside the field of activities of the Commission on Human Rights.

52. Lord MACDONALD (United Kingdom) wholeheartedly agreed with the explanation given by the Turkish representative. The Third Committee was not competent to deal with the right to self-determination. It was a question of the method to be employed. While no delegation was more attached than his own to the principle involved, he felt that for the Third Committee to adopt it would merely mean duplication of the work of a more appropriate committee. To vote against the amendment was not to vote against the principle, which both opponents and proponents had equally at heart.

53. Mr. AGUILAR CHAVEZ (El Salvador) drew attention to the fact that many of his countrymen had died on foreign battle-fields in defence of the principle of self-determination. That principle was embodied in the United Nations Charter and the Third Committee was competent to deal with it. The Committee should attach particular importance to the statement of that right, because it had been so frequently violated.

54. Mr. Aguilar Chávez considered the joint amendment entirely satisfactory.

The meeting rose at 12.55 p.m.

Printed in U.S.A. A—39450—November 1950—3,400

Annex 10

Official Records of United Nations General Assembly, Fifth Session, Third Committee, 311th Meeting, 10 November 1950, 3 p.m., UN Doc. A/C.3/SR.311

United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

THIRD COMMITTEE 311th

MEETING

Friday, 10 November 1950, at 3 p.m.

Lake Success, New York

CONTENTS

Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and A/C.3/L.76) (*continued*)

[Item 63]*

DRAFT RESOLUTION SUBMITTED BY BRAZIL, TURKEY AND THE UNITED STATES OF AMERICA (A/C.3/L.76) (*continued*)

1. The CHAIRMAN called for further discussion on the amendment submitted by Afghanistan and Saudi Arabia (A/C.3/L.88) to the basic text (A/C.3/L.76).

2. Mr. KAYALI (Syria) emphasized the importance of the amendment and paid a tribute to the lofty intentions of its sponsors. The aim of the amendment was to guarantee the right of peoples to self-determination—a right which was both fundamental and sacred. His delegation would therefore give its full support to the amendment.

3. Like all the countries which had only recently been freed from foreign rule, Syria attached perhaps greater importance than other countries to the recognition of that sacred right and was particularly concerned that it should be embodied in the covenant on human rights.

4. One of the arguments advanced by the opponents of the joint amendment was that the right to self-determination should not be included in the covenant since it was already embodied in the United Nations Charter. To that he would reply that the general purpose of the authors of the Charter had been to maintain international peace and security and to promote respect for human rights and fundamental freedoms, while the maintenance and safeguarding of those rights had been left to the Organization that was being set up. It was, therefore, for those who were drafting the covenant on human rights and had been instructed to give general guidance on policy to the Commission on Human Rights to guarantee those rights and ensure respect for them. That would be possible only if the fundamental right to self-determination was recognized first, for it was the essential prerequisite of all other rights.

5. It had also been argued that the covenant should cover only the rights of individuals. To that he could reply that it already contained certain collective and social rights, such as the right to freedom of association.

6. Many countries had had to pay dearly for their independence. The independence of such countries as the United States of America, the Philippines, India, Pakistan and Indonesia had cost too many wars and revolutions, with alternating successes and reverses.

7. The colonial mentality had undergone a considerable change in the post-war world. The United States of America and the United Kingdom had embarked upon a liberal policy aimed at giving the right of self-determination to the peoples under their administration. The Netherlands, too, had adopted a wise and far-sighted policy in that field. Thanks to the endeavours of all those States to recognize the right of peoples to independence, countries such as Pakistan, India and the Philippines were represented in the United Nations. The fate of other peoples still depended on the decision to be taken by the United Nations in the matter.

8. The General Assembly would be failing in its duty and would not be fulfilling its obligations under the Charter if it did not recognize the right of peoples to self-determination. The members of the Committee had an opportunity to repair the injustice endured for centuries by the populations of Non-Self-Governing Territories, to promote co-operation between the peoples and to build a better world.

9. Mr. KOUSSOFF (Byelorussian Soviet Socialist Republic) said that his delegation would vote for the Afghan and Saudi Arabian amendment, which was fully consistent with the purposes of the United Nations, namely, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination, to develop self-government among

* Indicates the item number on the General Assembly agenda.

the populations of Non-Self-Governing Territories, to take due account of their political aspirations, and to assist them in the progressive development of their free political institutions.

10. The amendment submitted by Afghanistan and Saudi Arabia, which defended the interests of the populations of the Non-Self-Governing Territories, was a concrete reply to the question raised by the Economic and Social Council: whether the first eighteen articles were adequate, and whether they would protect the rights to which they related. It would, if adopted, fill an important gap in the draft covenant on human rights. Mr. Koussoff stressed that the right of peoples to self-determination comprised the right to use their national language and receive the necessary political education. The Byelorussian SSR was convinced that, if that right were denied, the Universal Declaration of Human Rights and the covenant itself would remain a dead letter, for the colonial Powers would continue, as in the past, to oppress the populations of the Non-Self-Governing Territories.

11. The Belgian representative, in opposing the amendment, had referred, at the 310th meeting, to the necessity of respecting the traditional customs and institutions of the Non-Self-Governing Territories and had said that, in the interests of those populations, it would be better not to recognize their autonomy. That statement, contrary to all logic, was merely the manifestation of a colonialism the ravages of which were, alas, only too apparent. The Belgian representative had also pointed out that the populations of the Non-Self-Governing Territories were liable to abuse their right to vote if it were granted suddenly; it was, however, possible that the interests of the native population and those of the Administering Authority did not coincide and that a vote considered mistaken by Belgium might in fact be an excellent one for the native population itself.

12. Other delegations had affirmed that the right of peoples to self-determination, being a collective right, was out of place in a covenant intended to guarantee the rights and freedoms of the individual. Yet, as the Byelorussian delegation had constantly affirmed, if that right were not recognized, all individual rights would cease to exist.

13. The United Kingdom representative had questioned the competence of the Third Committee (310th meeting). In advancing that facile argument, had he not been seeking to evade the admission that, in fact, he was opposing the recognition of the right to self-determination?

14. The Byelorussian SSR was all the more in favour of the inclusion of that principle in the covenant since it knew from experience what benefit the peoples would derive from recognition of their right to self-determination. From the moment when the Supreme Soviet of the USSR had granted that right to the Byelorussian Republic, the latter had been able, enjoying rights equal to those of the other federal republics, to develop its economy and attain the level of advancement it then enjoyed. The Byelorussian SSR was therefore anxious that all the peoples of the world should enjoy the rights it had acquired in 1917, and would accordingly vote in favour of the amendment submitted by Afghanistan and Saudi Arabia.

15. Mr. AZKOUL (Lebanon) said that his delegation was grateful to the representatives of Afghanistan and Saudi Arabia for having raised the question of the right of the peoples to self-determination. The Lebanese Constitution recognized that right, on which Lebanon's very existence depended. For that reason his country was one of the nations that was most desirous of guaranteeing that fundamental right to all.

16. The Lebanese delegation regretted, however, that the essential principle had been posed in such a manner that the Committee had as a result confused the substance of the problem with the procedure of application. It was possible that a large number of delegations, while favouring the principle, might be opposed to the amendment because they did not approve of the procedure contemplated.

17. Mr. Azkoul had been a member of the Commission on Human Rights for a number of successive sessions. He could therefore foresee what the reaction of that Commission would be if, as the amendment proposed, it was requested "to study ways and means which would ensure the right of peoples and nations to self-determination and to prepare recommendations for consideration by the General Assembly at its sixth session". It was very probable that the Commission, after a long discussion on procedure, in which the arguments already heard would be repeated, would either purely and simply renounce the idea of introducing the right in the covenant or mention it only in the preamble of the covenant, for example. Surely such a meagre result was not desired.

18. The question of the right to self-determination was primarily a political one. Its juridical and human aspects, despite their importance, were after all secondary. To entrust it to a Commission whose task was solely to ensure respect for human rights was probably not therefore the best procedure that might be adopted. The Lebanese delegation considered that that question of capital interest, which was likely to be of concern to several United Nations organs, would be diminished in importance if referred solely to the Commission on Human Rights. It would be preferable to submit it to the General Assembly, which would include it as a separate item on its agenda and decide, after consideration, to which organ it should be referred.

19. The Lebanese delegation had accordingly submitted a procedural proposal (A/C.3/L.104) respecting the amendment of Afghanistan and Saudi Arabia, which, Mr. Azkoul wished to reassure the Committee, tended to restore the importance of the question by putting it in its rightful place and enabling Member States and the General Assembly to seek, in the best possible conditions, ways and means which would ensure the right of peoples and nations to self-determination.

20. Mr. CASSIN (France) recalled that, under Article 55 of the Charter of the United Nations, universal respect for, and observance of, human rights and fundamental freedoms for all should effectively enable the United Nations to establish between nations relations based on "respect for the principle of equal rights and self-determination of peoples".

21. Certain representatives, however, reversing the order of the Charter, were transforming the end into the means since, according to them, peoples should be granted the right to self-determination in order that they should be enabled to enjoy essential political rights and fundamental freedoms. It was the duty of the Third Committee to give full value to the principles of the Charter, and consequently to promote respect throughout the whole world for human rights and fundamental freedoms. In order to accomplish that task, it had to take action in the sphere of individual freedoms as well as that of collective and national freedoms.

22. That was an objective dear to the heart of the French people which, for one hundred and fifty years, had so often shed blood in the cause of the liberation of peoples throughout the world. Mr. Cassin also recalled that France had granted French citizenship to the inhabitants of many of its former colonies and had recognized their right to participate in the political life of metropolitan France, particularly in the sending of deputies to the National Assembly. That enterprise, though as yet unfinished, left no doubt as to the sincere desire of France that the populations it administered should quickly accede to complete autonomy.

23. The French delegation had clearly proclaimed that the United Nations was fully competent to achieve, through the appropriate organs, one of the fundamental purposes enunciated in the Charter. It did not therefore deny either the general competence of the Organization or the particular and definite competence of each organ. It seemed evident, however, that in the very interest of the task to be accomplished, the competence of the various organs should not be confused. If the Third Committee transformed the Commission on Human Rights into a sort of higher council of nationalities, was there not the risk that other United Nations organs, encouraged by that example, might encroach on the functions of neighbouring bodies? It would be said that the activities of the commissions and councils should be co-ordinated, but that co-ordination should take place in the principal organs and not at the foundation itself of the United Nations edifice, between one subsidiary commission and another. Such a confusion would be regrettable, for it would detract from the prestige of the commissions and the work they had to undertake, which was, in the case in point, the covenant on human rights.

24. Mr. CAÑAS FLORES (Chile) pointed out that the discussion which was taking place was paradoxical since all representatives agreed on the principle of the question and differed only on the question of procedure. While some of the supporters of the joint amendment had emphasized their democratic feelings, the sincerity of which could not be doubted, other countries had as vehemently set forth their liberal and democratic intentions, which in fact they never practised. Those who supported the amendment, as well as those who rejected it, recognized the merits of the right to self-determination.

25. Some had questioned, from a legal point of view, the competence of the Commission on Human Rights to define a right of a collective nature. That seemed illogical, for if the Commission could define individual rights why could it not continue its work by guaranteeing collective and national rights, the indispensable complement of individual rights?

26. The Chilean representative emphasized that the time factor should be borne in mind. In his opinion, the time had come for all peoples to be given full exercise of their national responsibilities, and to show that the United Nations recognized that people should be independent and free from external interference.

27. The Chilean delegation approved the purposes of the proposal submitted by Afghanistan and Saudi Arabia and would therefore vote for it.

28. Mr. NORIEGA (Mexico) wished to comment on the various observations which his previous statement (310th meeting) had aroused.

29. None of the arguments adduced had made him change his position. As far as colonialism was concerned, some nations were by force of circumstances open to criticism by others, especially if they persisted in supporting an out-of-date institution.

30. The Belgian representative had said that some people were not ready for independence. It was not necessary to recall that in the heroic days of the penetration of Africa, Asia and the South Sea Islands by the Western Powers, the sovereignty of the peoples who inhabited those continents was recognized to such an extent that the new-comers did not hesitate to sign treaties with their chiefs. The fact that those treaties had not been models of fairness was another question.

31. In the course of the discussion the Treaty of Berlin had been invoked as an instrument drawn up to abolish slavery. Would it not be more in conformity with history to regard that instrument as a delimitation of spheres of influence?

32. The colonial Powers might be gifted with the best intentions. They nevertheless placed their own interests above those of the peoples they governed. He recalled the case of the Ewes, which the Trusteeship Council had been discussing for some time. That African people had seen their land divided between France and the United Kingdom by colonial policy. They were divided one against the other, subjected to conflicting influences, and faced with the impossibility of preserving their traditions and their intrinsic character. That was a glaring example of the violation of the right of peoples to self-determination. In spite of all the statements in the Charter and other United Nations documents, such a state of affairs existed.

33. Certain speakers had stated that the Third Committee was not competent to discuss the problem of the right of peoples to self-determination. It was strange that that argument had not been made in connexion with the colonial clause, which raised a similar type of problem. The right of peoples to self-determination was certainly the attribute of collectivity, but that collectivity was composed of individuals. To make an attempt on their collective rights was the same thing as to violate their individual freedoms. But while the Committee's competence was questioned no speaker ventured to name an organ which, in his opinion, would be competent. He was sure that the Committee was competent, as were the Economic and Social Council and the Commission on Human Rights. He mentioned in that connexion the excellent document published by the Secretariat, *These Rights and Freedoms*, which contained all the necessary arguments to support that opinion.

34. Some wished to refer the question to the Sixth Committee. He recalled that when the Third Committee had asked for the opinion of the Sixth Committee regarding the insertion of a federal clause in the convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, the Sixth Committee, after having rejected two proposals before it, had stated that it was not competent to deal with the matter.[1] It might be the same with the question before the Committee.

35. Commenting on the procedural proposal made by the Lebanese representative (A/C.3/L.104), he regretted that it mentioned only the right of nations to self-determination, and not the right of peoples. Nations were by definition already independent bodies in a position to defend themselves, while there were many peoples deprived of international legal personality, and it was they who needed to be defended.

36. Passing on to the practical side of the proposal, he expressed doubts as to whether it would have any effect other than to raise new discussions and further reference of the matter from one Committee to another, to the detriment of the problem which it was intended to solve. At first sight the Lebanese proposal seemed attractive, because it proposed treating the problem as a whole; but that was not what was required in the case in point: all that was needed was to ask the Commission on Human Rights to study the right of peoples to self-determination within the framework of the covenant on human rights.

37. He was prepared, however, after the vote had been taken on the joint amendment submitted by Afghanistan and Saudi Arabia (A/C.3/L.88), to consider the proposal of the Lebanese delegation. He would only do so if the joint amendment were adopted, and with reservations as to amendments which he might later propose.

38. Mr. BABAHODJAEV (Union of Soviet Socialist Republics) wanted to point out that certain observations made at the previous meeting by the United Kingdom representative were inaccurate. Lord Macdonald had said there were people in the USSR who did not have the right to self-determination; it could only be that he was ill-informed as to the events and the changes which had occurred since the Revolution, or that he ignored them.

39. He stated that since the establishment of the Soviet régime, all nationalities had the same rights. Those who before the Revolution had been backward had made progress, thanks to the régime. He recalled that he was himself a native of Uzbekistan, one of the more backward countries before the Revolution, where there had been no industry and where agriculture had been primitive. The Uzbek SSR was now one of the republics of the USSR which enjoyed equality of rights and had its own government and a Constitution under which citizens were guaranteed the broadest democratic rights and liberties, including the right to work, education, leisure and so forth. He gave some details showing that Uzbekistan had become an industrial country where agriculture was mechanized and where life had become easier. Before the Revolution only 2 per cent of the population of Uzbekistan had been literate, whereas there was no longer any illiteracy in the Republic. Secondary-school education was universal and compulsory in the Uzbek SSR and there were 5,000 schools with 40,000 teachers. There were 36 higher educational establishments of various kinds, where not a single one had existed before the Revolution. Uzbekistan also had an Academy of Sciences, with 23 research institutes.

40. Passing on to the arguments put forward by the Belgian representative, he said that he thought they were lacking in foundation. Every nation was capable of self-government if given the opportunity. If the Congo, for example, were given the same chances as Uzbekistan, it would certainly be able to govern itself. Anyone who upheld the contrary opinion was adopting an attitude which was unscientific and full of racial prejudices, from which he should seek to free himself.

41. It was in that spirit that his delegation would vote for the amendment proposed by Afghanistan and Saudi Arabia.

42. Lord MACDONALD (United Kingdom), in reply, read some extracts from the Constitution of the USSR, including article 14, to show that in that country the lead in all activities was taken by the Soviet Union and that the independence enjoyed by the federated republics was illusory. He did not therefore recognize the right of that Power to set itself up as a judge of other nations.

43. Mr. PAZHWAK (Afghanistan) associated himself with the comments made by the Mexican representative. He wanted to point out that, although the delegations had stated that they were not opposed to the proposal in principle, they had given much time to a discussion which was polemical and tendentious in character. Recalling the stand taken by the Belgian representative, he begged him to modify his attitude.

44. Passing on to the proposal submitted by the Lebanese delegation (A/C.3/L.104), and praising his procedural skill, he recalled the fate of an amendment submitted by Yugoslavia which had been put to the vote at the 305th meeting. He was determined that his own amendment should not suffer the same fate and appealed to the Lebanese representative to withdraw his proposal or at least to allow it to be discussed and voted upon after the vote on the amendment submitted by Afghanistan and Saudi Arabia.

45. Mr. BAROODY (Saudi Arabia) also feared that the joint amendment would be dropped as a result of a manœuvre similar to that which had eliminated the Yugoslav amendment. If the Lebanese draft resolution were adopted, the General Assembly might discuss it during session after session without any result. He would therefore have to vote against it, and he asked the Lebanese representative to withdraw it.

46. Recalling the position of the Belgian delegation, he wished to point out that the members of the Committee were not responsible for any difficulties confronting the colonial Powers. The latter always spoke of their responsibilities; but nobody had imposed those responsibilities upon the colonial Powers; they had assumed them of their own free will.

47. Mr. Baroody recalled that when the Committee had discussed the federal clause, there had been no proposal to refer it to the Sixth Committee. Every delegation had stood its ground and stated its attitude.

[1] See *Official Records of the General Assembly, Fourth Session, Sixth Committee*, 203rd meeting.

The Committee should do likewise in regard to the matter before it; it was merely asking the Commission on Human Rights to fulfil a reasonable request.

48. Several arguments had been advanced against the amendment. Some speakers had maintained that the Committee should deal only with individual rights: apparently the conclusion to be drawn from that argument was that the populations of colonies or of Trust Territories were not composed of individuals and therefore had no right to life or liberty. The United Kingdom representative had further asserted (309th meeting) that his country preferred progressive development. The question was when that development would be completed and the terms "as soon as possible" and "progressive" were vague. Other speakers had told the supporters of the draft resolution that they were playing into the hand of some groups; but the truth was that they were merely defending the rights of colonial peoples.

49. Finally, Mr. Baroody believed that if the Committee evaded the question, it would be many years before an article safeguarding the right of peoples to self-determination was included in a convention. The Commission on Human Rights was simply to be asked to study means of safeguarding that right. As a result, it might reach a formula for inserting a clause in the covenant which would give some hope to the Non-Self-Governing Territories. There was nothing unreasonable in that request and Mr. Baroody hoped that the majority would exercise its judgment and support the amendment submitted by Afghanistan and Saudi Arabia.

50. The CHAIRMAN outlined the situation from the procedural point of view, explaining that the basic text was the joint draft of Brazil, Turkey and the United States (A/C.3/L.76). If the Lebanese proposal (A/C.3/L.104) were put to the vote and adopted, it would eliminate the amendment submitted by Afghanistan and Saudi Arabia (A/C.3/L.88). On the other hand, if the latter amendment was put to the vote first and rejected, the Committee could proceed to vote on the Lebanese proposal.

51. He therefore decided that the amendment of Afghanistan and Saudi Arabia should be voted upon first.

52. Mr. AZKOUL (Lebanon) was in complete agreement with the order of voting suggested by the Chairman, but for quite different reasons.

53. He had entitled his draft "procedural proposal" to indicate that it did not affect the substance of the question.

54. In reply to several observations directed to him, and, in the first place, to the Mexican representative, regarding the necessity for the Lebanese proposal, he noted that none of the speakers, not even the authors of the amendment, had dealt with the question of ways and means to safeguard the right of peoples to self-determination. If the study of ways and means was included in the General Assembly's agenda, the statements which would be made to the Assembly would deal with those ways and means and not with matters of procedure, as was the case in the Third Committee.

55. Mr. Azkoul assured the delegations of Afghanistan and Saudi Arabia that if they committed their governments to requesting the inclusion of the item in the General Assembly's agenda, he was prepared to withdraw his proposal. It was all very well to pose as the champion of the rights of peoples; but those rights had to be adequately defended.

56. In conclusion, Mr. Azkoul recalled that the problem was to select the best procedure to follow. His experience led him to believe that the members of the Commission on Human Rights would find themselves very much embarrassed by the General Assembly's recommendation, and that they would simply insert a phrase in the preamble and the matter would thus be set aside. He was trying to save something which might be lost; that was why he would not withdraw his proposal.

57. Mr. ROY (Haiti) wondered whether the Committee should not first settle the matter of competence.

58. He added that his delegation would not hesitate to vote for the joint amendment of Afghanistan and Saudi Arabia as soon as his doubts regarding the Committee's competence had been dispelled.

59. Mr. NORIEGA (Mexico) said that the Committee's competence could not be questioned: it had been recognized by implication on two previous occasions with respect to similar problems: once, when the vote was taken on the colonial clause (302nd meeting) and again when the Committee adopted (309th meeting) the amendment submitted jointly by the United States and Yugoslavia (A/C.3/101) requesting the Commission on Human Rights to take account of the principles and purposes of the Charter of the United Nations.

60. Mr. CASSIN (France) pointed out that there was a distinction between a direct and imperative recommendation such as that contained in the amendment, bearing upon a subject which was clearly beyond the Committee's competence, and the much broader text adopted at the 309th meeting, at the suggestion of the United States and Yugoslavia, with respect to which—he would remind the Committee—he had made reservations without wishing to raise the matter of competence, out of respect for the Committee.

61. In the circumstances, Mr. Cassin thought it his duty formally to invoke rule 120 of the rules of procedure.

62. Mrs. ROOSEVELT (United States of America), Lord MACDONALD (United Kingdom), Mr. PANYUSHKIN (Union of Soviet Socialist Republics), Mr. BOKHARI (Pakistan) and Mr. CHANG (China) pointed out that under rule 120 the Committee could decide upon its own competence; but it was the competence of the Commission on Human Rights which had been questioned during the discussion. To invoke rule 120 with regard to the joint draft resolution was tantamount to questioning the Committee's competence to submit recommendations to the Commission on Human Rights.

63. The CHAIRMAN concurred.

64. Mr. CASSIN (France) argued that a question which did not come within the Committee's competence could not be the subject of a recommendation to a subsidiary organ. He affirmed categorically that the question of the self-determination of peoples was an essentially political question which did not come within the

province of a committee with essentially social objects such as the Third Committee.

65. Nevertheless, he would not insist on his motion.

66. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) and Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) wished, since the question of the competence of the Commission on Human Rights had been raised, to state that the General Assembly had recognized the competence of that body by the sole fact that it had given directives regarding a specific question. That was the meaning to be attached to the Committee's vote on the joint amendment.

67. The CHAIRMAN put to a vote the Afghan and Saudi Arabian amendment (A/C.3/L.88) to the joint draft resolution submitted by Brazil, Turkey and the United States of America (A/C.3/L.76).

68. Mr. NORIEGA (Mexico) requested a roll-call vote.

A vote was taken by roll-call.

In favour: Afghanistan, Argentina, Burma, Byelorussian Soviet Socialist Republic, Chile, China, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen and Yugoslavia.

Against: Australia, Belgium, Canada, Denmark, France, Greece, Netherlands, New Zealand, Nicaragua, Norway, Peru, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Brazil, Ethiopia, Lebanon, Thailand, Venezuela.

The amendment was adopted by 31 votes to 16, with 5 abstentions.

69. The CHAIRMAN then put to a vote the procedural proposal of Lebanon (A/C.3/L.104) relating to the amendment submitted by Afghanistan and Saudi Arabia (A/C.3/L.88).

70. Mr. AZKOUL (Lebanon) requested a roll-call vote.

A vote was taken by roll-call.

In favour: Denmark, Ethiopia, Iraq, Lebanon, Mexico, Netherlands, Peru.

Against: Afghanistan, Australia, Belgium, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia, El Salvador, Guatemala, India, New Zealand, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Yemen, Yugoslavia.

Abstaining: Argentina, Brazil, Canada, Chile, China, Cuba, Dominican Republic, Egypt, France, Greece, Haiti, Honduras, Indonesia, Iran, Israel, Nicaragua, Norway, Pakistan, Philippines, Saudi Arabia, Sweden, Syria, Thailand, Turkey, Union of South Africa, United States of America, Uruguay, Venezuela.

The proposal was rejected by 16 votes to 7, with 28 abstentions.

The meeting rose at 6.15 p.m.

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Annex 11

Official Records of United Nations General Assembly, Fifth Session, Third Committee, 312th Meeting, 13 November 1950, 10.45 a.m., UN Doc. A/C.3/SR.312

United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

THIRD COMMITTEE 312th

MEETING

Monday, 13 November 1950, at 10.45 a.m.

Lake Success, New York

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Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and A/C.3/L.76) (*continued*)

[Item 63]*

DRAFT RESOLUTION SUBMITTED BY BRAZIL, TURKEY AND THE UNITED STATES OF AMERICA (A/C.3/L.76) (*continued*)

1. Mr. MENDEZ (Philippines) explained that at the preceding meeting his delegation had been unable to vote against the joint amendment of Afghanistan and Saudi Arabia (A/C.3/L.88) regarding the right of peoples to self-determination because it had been unwilling to depart from the traditional policy of the Philippines. Nor had it wished to abstain, for it was anxious to show that it was far from remaining indifferent in the face of the problem.

2. He emphasized, however, that his delegation had voted in favour of the amendment in the hope that the question would be taken up by the Commission on Human Rights at a favourable time and in appropriate circumstances.

3. Mr. ZELLEKE (Ethiopia) said that his delegation had abstained from voting, not because it was opposed to the principle at stake, of which it appreciated the importance, but because it was doubtful whether the method employed to put that principle into practice would be effective. Its chief complaint against the text of the amendment of Afghanistan and Saudi Arabia was that it was vague and did not state clearly whether it applied to the peoples of colonial territories only or to other peoples as well. His delegation felt that the question should be studied more thoroughly and that the Commission on Human Rights would be unable to do anything useful in that regard in so short a time.

4. For those reasons the Ethiopian delegation had voted in favour of the procedural proposal of Lebanon (A/C.3/L.104).

5. Mr. CHAMORRO (Nicaragua) said that in the course of the general discussion his delegation had come to the conclusion that the question of the right of peoples to self-determination was basically different from other matters studied by the Committee. It was a purely national and political question and outside the scope of human rights. The Committee was only competent to discuss the rights of the individual as a human being, and not political questions.

6. That was why the Nicaraguan delegation had voted against the amendment of Saudi Arabia and Afghanistan and against the procedural proposal of Lebanon.

7. Mr. CABADA (Peru) observed that his country had always believed in the principle of the self-determination of peoples, which was the basis of its national independence. Despite its sincere and unswerving devotion to that principle, the Peruvian delegation had been unable to vote for the amendment of Afghanistan and Saudi Arabia, because it felt that the Commission was not competent to discuss the rights of communities, but only the rights of the individual. It felt, moreover, that the amendment might introduce confusion into the discussions of the Commission on Human Rights and thus prove prejudicial to its high purpose.

8. On the other hand, the Peruvian delegation had voted in favour of the procedural proposal of Lebanon, and he expressed the hope that the problem would be carefully studied.

9. Mr. CHANG (China) said that he had not spoken on the item under discussion because it must be obvious to everyone that his delegation was in favour of the amendment of Afghanistan and Saudi Arabia.

10. However, he felt that the Commission on Human Rights and the Secretariat would be glad to have some explanation of the terms of the amendment and he would therefore try to bring out the principal ideas, of which there were three. First, the effect of the amendment was to reaffirm a principle—the right of peoples to self-determination. Secondly, the text requested the Commission on Human Rights to draw up an article

* Indicates the item number on the General Assembly agenda.

and he felt that it would be advisable for delegations to submit drafts to the Commission. Lastly, to use the phraseology of the amendment, a study should be made of ways and means which would ensure the right of peoples and nations to self-determination. Such a study should not be the exclusive responsibility of the Commission on Human Rights, the delegations also would have to take part in it. Some aspects of the matter might be outside the competence of the Commission on Human Rights but that need not prevent it from working for more extensive and tangible enjoyment of the right in question.

11. Sayed Ahmad ZEBARA (Yemen) pointed out that the right of peoples to self-determination was recognized explicitly in the Charter of the United Nations and that the provision in question was in no way incompatible with the terms of reference of the Third Committee or those of the Commission on Human Rights. He had listened with great attention to the arguments put forward by the opponents of the amendment, but had remained unconvinced. The delegation of Yemen had therefore voted in favour of the amendment of Afghanistan and Saudi Arabia.

12. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) said that he would first explain his delegation's vote, and then reply briefly to the comments made at the preceding meeting by the representative of the United Kingdom.

13. With regard to the vote, he recalled that his delegation had submitted an amendment (A/C.3/L.96) recognizing the right of every people and every nation to self-determination and inviting the Administering Powers to put that right into effect on the basis of the purposes and principles of the United Nations, particularly in the cultural sphere. Since the USSR amendment had not been adopted (305th meeting), he had voted in favour of the amendment of Afghanistan and Saudi Arabia, although it was rather different from the USSR amendment. He felt that the Commission on Human Rights was undoubtedly competent in that respect. On the other hand, he had voted against the procedural proposal of Lebanon, which he regarded as a tactical manœuvre designed to secure the rejection of the amendment of Afghanistan and Saudi Arabia and to delay consideration of the matter as long as possible.

14. The representative of the United Kingdom had misinterpreted article 14 of the Constitution of the USSR. It was incorrect to claim that the republics making up the Soviet Union had no competence with regard to any aspect of matters of credit and currency or questions of war and peace. In fact, the right of peoples to self-determination had been systematically applied and respected since the Soviet State was first established. That principle had been guaranteed in the Proclamation of 7 November 1917, when the Soviets took power, and had later been reaffirmed in the Declaration of the Rights of the Peoples of Russia, signed by Stalin and Lenin on 15 November 1917. It was as a result of those declarations that on 17 December 1917 the Council of People's Commissars had published a decree proclaiming the right of the Ukraine to secede from Russia. Subsequently, another decree had given Finland its independence. Lastly, a proclamation of 3 December 1917, signed by Stalin and Lenin and addressed to all the Moslem workers of Russia and the East, had announced the abrogation of all agreements and conventions concluded by the Czars with regard to the partition of Turkey, Iran etc. Only after that had the federation of Soviet republics been set up on the basis of the free union of free peoples. That federal regime had been confirmed on 25 January 1918 by the Third Congress of Soviets and in 1934 by the Stalin Constitution. According to article 17 of that Constitution, every republic in the Union had the right freely to decide to secede from the Union. During the six months of public discussion that had preceded the adoption of the Constitution, Generalissimo Stalin had personally urged that article 17 should be retained. He had felt that, even though no republic wished to leave the Union, the elimination of the article would have been a violation of the principle of free and voluntary participation.

15. Lord MACDONALD (United Kingdom) explained that at the preceding meeting he had protested against the fact that the Committee seemed to be paying too much attention to the colonial Powers and ignoring other countries, such as the USSR. He had quoted article 14 of the Constitution of the USSR because he believed that some peoples under the control of the USSR did not enjoy the right of self-determination. Moreover, Marshal Stalin, whom Mr. Panyushkin had recognized to be the supreme authority in the matter, had himself said in 1923 and on several other occasions, that the right of peoples to self-determination must be subject to the right of the workers to win power.

16. If the supporters of the amendment wished to be fair they would not confine their attention to the colonial peoples, but would also consider the peoples of countries such as Lithuania, Estonia and Latvia.

17. Mr. AZKOUL (Lebanon), replying to the representative of the USSR, explained that, as the amendments submitted by Afghanistan and Saudi Arabia had been drafted before the Lebanese proposal had been put to the vote, he failed to see why his own proposal should lead to the rejection of the proposal of Afghanistan and Saudi Arabia, as the representative of the Soviet Union had maintained in explanation of his vote against that proposal.

18. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) considered that in allowing the United Kingdom representative to speak again the Chairman had not conducted the discussion fairly.

19. The Ukrainian SSR had voted for the amendment of Afghanistan and Saudi Arabia because it was in the interests of all the peoples.

20. The United Kingdom representative could not have read article 13 of the Constitution of the USSR, according to the terms of which the Union was formed on the basis of voluntary association; each Republic was therefore free and self-governing. Thus, if the republics did not leave the Union, it was because they were acting in accordance with their own wishes.

21. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) reserved his right to reply later to the accusations made against his country by the United Kingdom representative.

22. Mr. KOUSSOFF (Byelorussian Soviet Socialist Republic) had voted for the amendment of Afghanistan and Saudi Arabia because it was in accordance with

his country's views and because it represented a small step towards the practical application of the right of peoples to self-determination.

23. With regard to the question which had been raised concerning the competence of the Commission on Human Rights, that body was under the authority of the General Assembly and must abide by the Assembly's decisions. If the Third Committee recommended that the Commission on Human Rights should consider a question—in the case in point the amendment of Afghanistan and Saudi Arabia—the Commission must comply with that recommendation.

24. The CHAIRMAN asked the Committee to consider paragraph 2 (*e*) of the basic text (A/C.3/L.76).

25. He pointed out that that text and the amendments to it were reproduced in the synoptic table (A/C.3/L.100), and invited those representatives who had submitted amendments to speak.

26. Mr. PLEIC (Yugoslavia) considered that the proposal to mention economic, social and cultural rights in the covenant was both natural and logical. The history of the last half-century had shown that there was a close link between what were usually called human rights and social, economic and cultural rights. The second half of the twentieth century would certainly bring about further progress. If the Committee included those rights in the covenant, it would merely be keeping abreast of history; if it did not, it would show itself to be reactionary.

27. The Yugoslav delegation had come to the conclusion that its amendment (A/C.3/L.92) summed up the views of the various delegations as expressed during the discussion which had taken place in the Committee. While realizing that the covenant would not include all the rights covered by the Universal Declaration of Human Rights, it had considered that its underlying principles should be the same and had drafted its amendment with that end in view.

28. The first four paragraphs of the Yugoslav amendment were entirely based upon the Declaration. As the covenant did not include all the political rights embodied in the Declaration, it must include social, economic and cultural rights. That was the meaning of the last paragraph of the preamble.

29. With regard to the operative part, the simplest possible answer had been given to the question raised by the Economic and Social Council whether articles on social, economic and cultural rights should be included in the covenant. Inasmuch as it had decided "to include economic, social and cultural rights in the draft covenant on human rights", the Yugoslav amendment left it to the Commission on Human Rights to draft the articles.

30. If there were any objections to the fact that the first four sub-paragraphs constituted a preamble, he pointed out that there was nothing new in such an arrangement; in order to avoid a procedural discussion, he would ask the Committee to consider the Yugoslav amendment from the point of view of substance, the first four paragraphs being regarded merely as a necessary outline.

31. Mr. DAVIN (New Zealand) said he would prefer the Committee to keep the text of paragraph 2 (*e*) as it appeared in the joint draft resolution of Brazil, Turkey and the United States (A/C.3/L.76), rather than to adopt the Yugoslav amendment.

32. He doubted very much whether a revised text of the draft covenant, in which all economic, social and cultural rights would be included, could be ready in time for the sixth session of the General Assembly. The conception of those rights was still in course of development and it would be rash to affirm that the Commission on Human Rights would, at its seventh session, define all the existing rights in that field which should be included in an international instrument.

33. If the Commission on Human Rights decided to include some of those rights in the draft covenant—as it appeared to be invited to do under sub-paragraph (*b*) adopted at the previous meeting—it would have to choose the most important of those rights, those which were generally recognized, and leave the consideration of other rights until later.

34. The New Zealand delegation therefore approved paragraph 2 (*e*) of the basic text. The amendment which it had submitted jointly with the Greek delegation (A/C.3/L.83) was merely intended to clarify that text by adding the words "after the completion of work on the first international covenant on human rights" after the words "To proceed".

35. The word "first" before the words "international covenant" should be deleted, so that the text would conform to the other paragraphs which had been adopted previously.

36. Mr. LAMBROS (Greece) agreed with all that the New Zealand representative had said. He thought that paragraph 2 (*e*) of the joint draft resolution was preferable to the Yugoslav amendment, as the latter had already been dealt with when sub-paragraph (*b*) of the joint draft resolution was adopted as amended. He thought, however, that the amendment of Greece and New Zealand made the text of sub-paragraph (*e*) clearer.

37. By its adoption, at the 306th meeting, of the Mexican amendment to sub-paragraph (*b*), the Committee had decided that the Commission on Human Rights should endeavour to make the covenant very broad, but, in view of the scope of economic, social and cultural rights, the Commission on Human Rights could not be expected to specify them completely and finally in the covenant. It therefore appeared that certain economic, social and cultural rights would not take their final form in the covenant or could not be included in it and should be the subject of subsequent instruments and conventions. The meaning of the joint Greek and New Zealand amendment was that that vast subject should not be completely disposed of by the covenant, and that work on it should continue.

38. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) said that his delegation had frequently stressed the importance of economic and social rights and the necessity of guaranteeing them in the international covenant on human rights.

39. He had noted with satisfaction that in adopting the Mexican amendment to paragraph 2 (*b*) at its 306th meeting, the Third Committee had deleted from the draft resolution it was preparing for the Commission on Human Rights any reference to other possible

covenants. Consequently, there would be only one covenant on human rights, which should cover all fundamental rights and essential freedoms to whatever field they applied.

40. The USSR delegation therefore considered that it should be specifically stated which economic, social and cultural rights were to be included in the covenant. It was not a question of drafting the actual text of the articles—that was a task for the Commission on Human Rights—but of recommending principles for the guidance of the Commission. It was with those considerations in mind that the USSR delegation had submitted its amendment (A/C.3/L.96).

41. The amendment contained only the essential economic, social and cultural rights: the right to work and the free choice of an occupation, the right to rest and leisure, and trade-union rights. It also set forth such fundamental principles as equal pay for equal work and affirmed the duty of the State to provide social security for workers and employees in accordance with the laws of each country and to take all measures necessary to ensure decent living accommodation for everyone. The amendment provided that the State must give everyone access to education and guarantee that right by the provision of free elementary education, a system of scholarships and the requisite number of schools.

42. The amendment was in keeping with the interests of all peoples and in complete conformity with the objectives of the United Nations Charter.

43. Mrs. ROOSEVELT (United States of America) felt that the Committee should reject the Yugoslav and USSR amendments, giving the Commission on Human Rights a mandate to include additional articles on economic and social rights in the covenant, just as it had already rejected the proposals made by those countries to include other rights in the covenant.

44. The solution they proposed was too extreme. To adopt it might seriously jeopardize the completion of the covenant on human rights and would in any case postpone it for many years more.

45. She pointed out in that connexion that the USSR proposal was merely an empty declaration, since in another amendment the same delegation had called for the deletion of all the machinery provided to implement human rights.

46. It seemed scarcely necessary to point out the extent of United States' support for efforts made to improve economic and social conditions in the present-day world, and the way in which it sought to enable all peoples to enjoy individual freedoms. The United States lent its support to all agencies of the United Nations working in the economic and social fields, such as the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Bank for Reconstruction and Development and the International Labour Organisation. It seemed unnecessary to stress all that the United States had done to promote the development of economic and social rights in other countries as well as at home.

47. The Committee apparently wondered whether adoption of the revised text of paragraph 2 (*b*) would have any effect on paragraph 2 (*e*). It should be noted that sub-paragraph (*b*) had been variously interpreted. Some took the view that it would not bind the Commission on Human Rights to add further rights to the existing covenant, but would simply call upon it to consider the advisability of so doing. Others thought that it would compel the Commission on Human Rights to add certain rights which were not so far included.

48. Whatever view was taken, the United States delegation was convinced that the Third Committee could and should adopt the provisions of paragraph 2 (*e*).

49. In fact, under any construction of paragraph 2 (*b*), it was not possible for all conceivable economic and social rights to be included in the draft covenant. Even if it were possible to visualize the inclusion of all the rights set forth in the USSR and Yugoslav proposals, there would still be many rights not covered by the covenant. A comparison of the rights set forth in the Universal Declaration of Human Rights and those set forth in the USSR and Yugoslav proposals showed immediately that some rights in the Declaration were not included in either proposal.

50. Thus, whatever construction was placed upon paragraph 2 (*b*), those who wished to secure the speedy adoption of adequate measures to protect and safeguard human rights must vote for paragraph 2 (*e*), which called upon the Commission on Human Rights to proceed with the consideration of additional instruments and measures relating to economic, social, cultural and other human rights not included in the covenant.

51. Mr. PRATT DE MARIA (Uruguay) recalled that at its 306th meeting, the Third Committee had adopted a text in which the Commission on Human Rights was invited to study the possibility of adding other rights to the covenant, taking into account *inter alia* the rights set forth by the USSR in document A/C.3/L.96 and by Yugoslavia in document A/C.3/L.92.

52. In view of the fact that the amendments submitted by the USSR and Yugoslavia to paragraph 2 (*e*) simply recapitulated certain provisions of the above-mentioned documents, it might be wondered whether the question had not already been settled and whether it should be reopened.

53. Mr. NORIEGA (Mexico) said that, after consulting various members of the Committee, he had reached the conclusion that his delegation would be able to accept paragraph 2 (*e*) in the amended version proposed by the delegations of Greece and New Zealand, provided it were amended by the insertion of the words "pacts or protocols concerning articles of the covenant which may require regulation and" after the words "additional instruments and measures dealing with".

54. That amendment would enable the Commission on Human Rights and the Economic and Social Council to have a clear idea of the Third Committee's position on the question under consideration.

55. Explaining his proposal, he recalled that when paragraph 2 (*b*) was adopted (306th meeting), he had said that in his view the adopted text automatically annulled sub-paragraph (*e*). Subsequently, after his exchange of views with other delegations, he had come to the conclusion that his opinion was not wholly justified. In fact, the various problems raised by the covenant

on human rights did not fall exclusively within the jurisdiction of the Third Committee. Other organs of the United Nations were considering different aspects of the question: he need only refer to the work of the Sub-Commission on Freedom of Information and of the Press, which was preparing two international conventions, and the Commission on the Status of Women, which was drawing up a convention on the political rights of women.

56. The Mexican delegation had therefore made an effort to find a formula which would allow the Commission on Human Rights to include in the draft covenant the greatest possible number of economic, social and cultural rights which did not raise special difficulties of application, while at the same time leaving it free to study the other rights and to supplement the covenant later by conventions or protocols, as the case might be.

57. In doing that, the Mexican delegation had been moved by a desire not to delay the preparation of the covenant on human rights unduly and to see that the Commission on Human Rights did not cease to expand and improve that document until it became a truly effective instrument of human progress.

58. The Mexican delegation still believed that a covenant on human rights which did not safeguard economic, social and cultural rights would be of no greater service to the cause of individual freedom than the old liberal constitutions of the nineteenth century, whose beneficent effect had been reserved for one sector of mankind. However, it was conceivable that for economic reasons, for example, a State might not be in a position immediately to undertake to respect all the economic rights which were worthy of inclusion in an international instrument effectively guaranteeing the protection of human rights. That was why, for the time being, the wisest course seemed to be the preparation of a covenant which the greatest possible number of States could sign at once, to be completed later by protocols to which governments could accede as soon as they felt in a position to do so.

59. It should not be thought that progress achieved that way would be useless or defective: even if the covenant and the supplementary instruments were not generally applied at once, the mere fact of their existence would constitute an encouragement to the peoples and an aim towards which the efforts of governments would be directed.

60. Mr. AZKOUL (Lebanon) wished to point out that the Lebanese delegation was among those which had urged that economic, social and cultural rights should be included in the Universal Declaration of Human Rights. It did not necessarily follow that those delegations must take the same stand with regard to the inclusion of the rights in the covenant.

61. The difference of attitude was to be explained by the different nature of the two documents. It must not be forgotten that the covenant was a legal instrument, which would not only be binding on States but would also expose them to attacks from the international community or the other signatories of the covenant if they failed to respect its provisions. It was therefore conceivable that a government anxious scrupulously to fulfil its undertakings might hesitate to sign an agreement which it was not sure it could carry out forthwith to the full.

62. He felt that he should warn the Committee against the danger of considering all those who spoke in favour of including economic, social and cultural rights in the draft covenant as defenders of those rights and champions of their application. Such confusion had already had regrettable consequences. On the other hand, it would be easy to prove that delegations which advocated the preparation of several mutually complementary conventions were anxious to secure the effective enjoyment of fundamental freedoms on a universal scale. It would be better to ask the Commission on Human Rights to prepare, for the next session of the General Assembly, a draft acceptable to all, which could immediately be open for signature, than to give it too ambitious a task which it would have neither the time nor the means to bring to a successful conclusion. In fact, although the first eighteen articles set forth traditional rights which were already included in many national legislations, the same was not true of certain other rights, which had not yet been legally defined.

63. In that connexion he noted that even if the Commission on Human Rights confined itself to drawing up a draft covenant including only the eighteen articles referred to, its work would be by no means negligible since the result would be to give international sanction to those traditional rights.

64. But that was not the only question involved. In fact, according to paragraph 2 (*e*), amended as proposed by the delegations of Greece and New Zealand, the Third Committee would be asking the Commission on Human Rights on the one hand to draw up a covenant containing certain other rights likely to receive general approval, in addition to those guaranteed in the first eighteen articles, and on the other hand, immediately to take up the study of means of drawing up one or more supplementary conventions dealing with the economic, social and cultural rights. The United Nations would thus be able to submit to the world a legal instrument ready for adoption and promulgation and, at a later date, one or more other instruments which States would sign as and when they were in a position to do so.

65. The Lebanese delegation was of the opinion that to insist on the inclusion of economic, social and cultural rights in the first covenant at that stage would be to jeopardize the whole work that was being undertaken, for it would delay the completion of the covenant and its adoption by the General Assembly and would oblige a large number of countries which were ready to sign the first eighteen articles not to accede to it because they could not, for the time being, guarantee fully all economic, social and cultural rights.

66. For those reasons, the Lebanese delegation would vote for paragraph 2 (*e*), as amended by Greece and New Zealand.

The meeting rose at 1 p.m.

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Annex 12

Official Records of United Nations General Assembly, Fifth Session, Third Committee, 318th Meeting, 17 November 1950, 3 p.m., UN Doc. A/C.3/SR.318

United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

THIRD COMMITTEE 318th

MEETING

Friday, 17 November 1950, at 3 p.m.

Lake Success, New York

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Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands)

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and A/C./3/L.111) *(concluded)*

[Item 63]*

1. The CHAIRMAN put before the Committee a consolidated text of the draft resolution on the covenant on human rights, as presented by the Officers of the Third Committee (A/C.3/L.111).

2. He paid a tribute to Mr. Schwelb, Assistant Director of the Division of Human Rights, who had been of great assistance in preparing the consolidated text.

3. Inasmuch as the Committee had approved each part of the draft resolution separately, it could discuss only the order of the paragraphs and their form, but not matters of substance. Members would have the opportunity to explain their attitude towards the resolution as a whole after a vote had been taken on the entire text.

4. Mr. LESAGE (Canada), Mr. LEQUESNE (United Kingdom) and Mr. DE LACHARRIERE (France) thought that representatives should have the opportunity to discuss the substance of the draft resolution as a whole before the vote was taken.

5. Mr. SANTA CRUZ (Chile) said that such a course would set a most undesirable precedent. The Committee had already discussed and voted on every component part of the draft resolution and should not reopen the debate on substance.

6. The CHAIRMAN suggested that the Committee should confine itself to a discussion of the form and arrangement of the draft resolution and to explanations of votes.

That suggestion was adopted by 45 votes to 2, with 4 abstentions.

Mr. A. S. Bokhari (Pakistan) took the chair.

7. Mrs. MENON (India) suggested a rearrangement of the draft resolution, whereby those paragraphs which began with "considers"—or with "whereas", which should be changed to "considers"—would be grouped together, to be followed, first, by all the paragraphs which began with the words "calls upon" and then by the paragraphs which began with "decides" and "requests". Such an arrangement would appear more logical.

8. The CHAIRMAN pointed out that the paragraphs were grouped under each of the four questions put to the Committee by the Economic and Social Council and that the Indian representative's suggestion would destroy that sequence.

9. Mr. AZKOUL (Lebanon) agreed with the Chairman. Furthermore, the various paragraphs which began with "considers" were followed by operative paragraphs which determined their meaning; if they were separated, there was a danger of distortion.

* Indicates the item number on the General Assembly agenda.

10. He suggested, however, that section B might be divided into two separate sections, the first dealing with the idea that the first eighteen articles of the draft covenant should contain a greater number of rights and the second with the idea that the wording of some of the articles should be improved.

11. Mr. NORIEGA (Mexico), Rapporteur, agreed that the resolution was not stylistically perfect, but said that it would be much simpler for him to prepare a report on the item under consideration if the existing arrangement of the paragraphs were maintained.

12. Mr. CHANG (China) supported that view. The draft resolution was irregular in structure, but it served its purpose; partial improvement would do more harm than good.

13. Mrs. MENON (India) and Mr. AZKOUL (Lebanon) did not press their suggestions.

14. The CHAIRMAN put to the vote the consolidated text of the draft resolution (A/C.3/L.111) as a whole.

The draft resolution was adopted by 29 votes to 5, with 13 abstentions.

15. Mr. BAROODY (Saudi Arabia) suggested that explanations of votes should be limited to three minutes.

That suggestion was adopted by 39 votes to 6, with 5 abstentions.

16. The CHAIRMAN called on representatives who wished to explain their votes to do so.

17. Mr. LESAGE (Canada) said that his country attached the greatest importance to respect for human rights within its own borders. In a spirit of collaboration the Canadian delegation had sought practical methods of producing a covenant on human rights that could be implemented. When the separate parts of the resolution had been considered, the Canadian delegation had several times cast a negative vote, as, for example, on the question of inclusion of economic, cultural and social rights, which in its opinion would make implementation of the covenant difficult, if not impossible.

18. The resolution as finally adopted was confusing, illogical, repetitive and diffuse, and the Canadian delegation had been unable to accept it. Nevertheless, in order not to make the task of the Commission on Human Rights more difficult still, it had not opposed the resolution but had merely abstained, with the reservation that it would in the future oppose the inclusion of provisions to which it had objected.

19. Mr. DAVIN (New Zealand) said that he had voted against the draft resolution because it included provisions which his delegation had consistently opposed. The Committee had been wrong to take an arbitrary decision to include economic, social and cultural rights in the covenant, since the definition of such rights involved a tremendous task and would provide a fertile field for disagreement. The result might well be to set back the adoption of the covenant for years and jeopardize the work done so far. It seemed impossible that the General Assembly should have before it at its sixth session a revised draft covenant including those rights.

20. Another reason for opposing the resolution had been that it included a paragraph relating to the right of self-determination. The New Zealand delegation considered that to be a right of groups and therefore out of place in a covenant dealing essentially with the rights of individuals. Furthermore, there was a serious inconsistency between section B of the resolution, in which the Commission was requested to take into consideration views expressed on certain rights, and the outright decision in section E to include in the covenant rights in the same field.

21. His country would, however, continue to maintain its interest in the work of the Commission on Human Rights and in the draft covenant, and he sincerely hoped that in spite of the handicaps imposed by the draft resolution a useful covenant would be produced.

22. Mr. BEAUFORT (Netherlands) said that he had, with regret, voted against the resolution because important matters had been omitted from it while ambitious but impractical ideas had been included.

23. More important, the Committee had deliberately discarded the opportunity to produce, within a short period after the adoption of the Universal Declaration of Human Rights, a covenant which would become binding international law. That could have been achieved, had the covenant been limited to a number of basic human rights, namely those enumerated in the first eighteen articles, with possibly a few others.

24. The Committee had, however, decided that social, economic and cultural rights too should be formulated at the same time, as part of international law, and that the right of complaint should be granted to individuals and special groups.

25. The Committee had apparently forgotten that the preamble of the Declaration stated that the universal and effective recognition of those rights should be secured by progressive measures. It had disregarded the necessity of gradual development of concepts of positive international law, as well as the fact that those rights did not as yet form part of the legal conscience in all parts of the world. As a result, both the effectiveness of the principles of law to be formulated and the supremacy of the law itself might suffer.

26. He hoped that the honesty of his delegation's position would be appreciated; it had been unable to accept a resolution which in its opinion would seriously harm the healthy development as well as the recognition and protection of human rights.

27. Mr. RODRIGUEZ ARIAS (Argentina) said that he had abstained from voting on some parts of the resolution and had opposed others, but had voted in favour of the resolution as a whole because it constituted a step forward in the preparation of a covenant on human rights.

28. Mr. DELHAYE (Belgium) said that, while his delegation approved of many of the provisions contained in the resolution, such as the federal clause and the provisions relating to the equality of rights of men and women, collaboration of various United Nations organs and co-operation with the specialized agencies, it considered that in the first covenant only general principles applying to economic, social and cultural rights should be given, and that, in view of the international situation, the right of petition should not for the time being be granted to individuals or groups of individuals.

29. Lastly, the Committee had decided to exclude the so-called colonial clause. Belgium administered colonial territories which were not sufficiently advanced to permit immediate application of the rights contained in the covenant, and, unlike some other countries, it wished to ratify the covenant in the knowledge that it would be able to carry out the obligations it assumed.

30. As the Belgian delegation had serious objections to some parts of the resolution, while it whole-heartedly supported others, it had been forced to abstain from voting. It would, however, continue to co-operate in the elaboration of a covenant such as would truly further the progress of mankind.

31. Mr. SZYMANOWSKI (Poland) explained why he had abstained from voting on the resolution. His delegation attached the greatest importance to the earliest possible adoption by the General Assembly of a covenant guaranteeing the fundamental rights of man. Hence the Committee's decisions should provide clear and adequate recommendations for the future work of the Commission on Human Rights.

32. The resolution did include sound and correct directives for the Commission on the colonial clause and the inclusion of articles on economic, social and cultural rights. On the other hand, it was less clear in its references to the federal clause and to the necessity of the addition of political rights in the first eighteen articles; those references left room for interpretations which would be unacceptable to his delegation.

33. The most inadequate part of the resolution was that dealing with the implementation of the covenant. He believed that the Committee had made a serious mistake in rejecting (314th meeting) the USSR proposal (A/C.3/L.96) to delete articles 19 to 41, and it was to be feared that its decision would have serious repercussions on the fate of the draft covenant. The decision not to delete articles 19 to 41 had caused his delegation to abstain from voting on the resolution.

34. Mrs. ROOSEVELT (United States of America) explained that she had voted for the resolution because her government thought it important that the work relating to the draft covenant on human rights should proceed as rapidly as possible and that every possible step should be taken in the General Assembly for the promotion of human rights. The Members of the United Nations must constantly keep in mind their relevant obligations under Articles 55 and 56 of the Charter.

35. She did, however, wish to point out her serious concern about the practicability of including economic and social rights in that first draft covenant. Her delegation would naturally have to reserve its position on the inclusion of such rights in the first covenant and would examine on its merits any text finally submitted, in order to determine whether or not it could support inclusion of that text in the draft covenant.

36. Mr. MOODIE (Australia) said that he had been unable to vote for the resolution although he agreed with many of its provisions. His delegation had consistently emphasized the importance of leaving it as far as possible to the Commission on Human Rights to consider all the suggestions made regarding the substance or wording of the draft covenant. It had expressed doubt about the wisdom of imposing decisions upon the Commission without, however, contesting the right of Committee members to express their views.

37. The resolution contained specific directives in respect of what should be included, but was confused and repetitious in form. It would be impossible for the Commission on Human Rights to submit a draft covenant based on it to the General Assembly at its sixth session, as directed in part A.

38. In the circumstances it would have been better to reject the resolution than to adopt it, leaving it to the Commission on Human Rights to complete its work as it had originally intended to do, and to submit the text of the draft covenant as it stood to the General Assembly at its next session.

39. In spite of its misgivings about the resolution, his delegation would of course continue to co-operate wholeheartedly with the Commission on Human Rights.

40. Mr. AZKOUL (Lebanon) stated that he had abstained from voting on the resolution. While the original text had not been specific enough in providing directives to the Commission on Human Rights, the final text contained too many directives and might produce a number of undesirable results: confusion about the work and competence of the Commission on Human Rights, delay in the preparation of the draft covenant, a reduction in the number of signatures to that instrument, and, finally, a disinclination on the part of the Economic and Social Council and the Commission to ask the General Assembly for its advice on such a matter again.

41. Mr. NORIEGA (Mexico) said that he had voted for the resolution because, on the whole, it gave the Commission on Human Rights an opportunity to continue its work on the basis of what the General Assembly deemed necessary at that time. He would not, however, conceal his view that the resolution was confusing in its wording, occasionally to the point of incoherency.

42. He could not agree with part C. The Sixth Committee had rejected the federal clause as early as 1948, and successive votes in the Commission on Human Rights had shown growing opposition to it. He hoped that such opposition would continue to grow.

43. Mr. LEQUESNE (United Kingdom) said that he had voted against the resolution because, although many of its provisions were acceptable, it was inadequate and possibly dangerous as a whole. The Committee had given no specific replies to the last of the four specific questions addressed to the General Assembly by the Economic and Social Council. Instead, it was merely asking the Council to request the Commission to take account of certain suggestions.

44. In part E, paragraph (*a*), it was decided that economic, social and cultural rights must be included in the draft covenant, while the second paragraph of part A called upon the Economic and Social Council to request the Commission to produce a revised draft of the covenant in time for the sixth session of the General Assembly. The task set forth in part E, paragraph (*a*), could not be accomplished in so short a time.

45. In adopting the resolution, the Committee had failed to heed the wise warning against impugning the authority of the Universal Declaration of Human Rights. The Committee should also ponder the fact

77. Mr. LEQUESNE (United Kingdom) also asked for an immediate vote and proposed suspension of the application of rule 119 of the rules of procedure.

78. Mr. SANTA CRUZ (Chile) thought that such a suspension would create a dangerous precedent and noted that rule 119 was mandatory.

79. The CHAIRMAN stated that those delegations which still wished to speak on the question of interference with radio signals could do so at the following meeting.

(c) Question of the freedom of information and of the Press in times of emergency: Economic and Social Council resolution 306 C (XI) (A/1397)

80. At the suggestion of Mr. LEQUESNE (United Kingdom), the CHAIRMAN stated that the draft resolution recommended for adoption in Economic and Social Council resolution 306 C (XI), which was reproduced in the note by the Secretary-General (A/1397), would be taken as the basic text for the Committee's consideration.

81. AZMI Bey (Egypt) agreed with that decision, but thought that freedom of information and of the Press was a fundamental freedom rather than a fundamental human right. The purpose of the resolution was to compel governments which had, for example, declared a state of siege and announced certain restrictions on that freedom to remain strictly within the limitations which they themselves had imposed.

82. He therefore proposed that the words "one of the fundamental freedoms" should be substituted for the words "a fundamental human right" in the first paragraph of the preamble and the word "freedom" for the word "right" in the second paragraph of the preamble.

83. Mr. SANTA CRUZ (Chile) suggested that it might be preferable to reproduce the wording of the last phrase of article 19 of the Universal Declaration of Human Rights in the first paragraph of the preamble.

84. He would, however, accept the Egyptian amendment.

85. Mr. NORIEGA (Mexico) supported the substance of the draft resolution, but thought that, if the preamble contained a reference to human rights, the operative part, embodying as it did a reference to a particular situation, might appear somewhat incongruous. Due importance, too, should be given to the phrase "on the pretext of emergencies".

86. He would, however, accept the Egyptian amendment.

87. The CHAIRMAN said that, in the absence of any objection, the Committee would take the text as amended by the Egyptian representative as a basis for the discussion.

88. Mr. BAROODY (Saudi Arabia) proposed that a separate vote should be taken on the words "in all circumstances" in the first paragraph of the preamble.

89. Freedom of information and of the Press could not always be fully enjoyed, because it might be abused by the dissemination, for example, of seditious or blasphemous libels.

90. Mr. CASSIMATIS (Greece) could not agree with the Saudi Arabian representative. Freedom of the Press should be safeguarded in all circumstances. The General Assembly should recommend to Member States that they should avoid imposing restrictions even in emergencies. It was hard to see who would decide what an emergency was or what measures should be taken if such emergencies occurred.

91. Mr. TEIXEIRA SOARES (Brazil) said that unless it was stated that freedom of information should be safeguarded in all circumstances, the reference to its limitation could not be understood.

92. Mr. MONTERREY (Nicaragua) said that governments ought to be permitted to impose restrictions on freedom of the Press when necessary, since abuse of that freedom might cause them serious difficulties.

93. Mr. PAZHWAK (Afghanistan) proposed the deletion of the second paragraph of the preamble. It was not clearly stated by whom or in what circumstances limitations had been placed upon freedom of information. It would be extremely hard to define emergencies and even harder to define such a phrase as "the pretext of emergencies".

94. Mr. MENDEZ (Philippines) thought that the objection raised by the representative of Afghanistan would be met if the words "may be placed" were substituted for the words "have been placed".

95. Mr. BAROODY (Saudi Arabia) proposed that the amendment should read "might be placed", in order to meet objections that the word "may" could be interpreted as being permissive or hypothetical.

96. Mr. MENDEZ (Philippines) accepted that proposal.

97. Mr. PAZHWAK (Afghanistan) withdrew his proposal for deletion, in favour of the amended Philippine amendment.

98. Mr. ROSHCHIN (Union of Soviet Socialist Republics) proposed the adjournment of the debate, under rule 115 of the rules of procedure.

99. Mr. MICHALOWSKI (Poland) moved the adjournment of the meeting, under rule 117 of the rules of procedure.

That motion was rejected by 25 votes to 11, with 9 abstentions.

100. Mr. MENDEZ (Philippines) opposed the USSR representative's motion for the adjournment of the debate, since the Committee had almost reached agreement on the amended text of the draft resolution.

101. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) supported the USSR representative's motion. The amendments, even if apparently trifling, might well change the substance of the draft resolution and so needed more consideration.

The motion for the adjournment of the debate was rejected by 23 votes to 7, with 15 abstentions.

102. The CHAIRMAN put to the vote the Saudi Arabian amendment to the amended text calling for the deletion of the words "in all circumstances" from the first paragraph of the preamble.

That amendment was adopted by 17 votes to 16, with 11 abstentions.

103. The CHAIRMAN put to the vote the Philippine and Saudi Arabian amendment to the effect that the words "might be placed" should be substituted for "have been placed" in the second paragraph of the preamble.

That amendment was adopted by 23 votes to 12, with 11 abstentions.

104. The CHAIRMAN put to the vote the draft resolution proposed by the Economic and Social Council in its resolution 306 C (XI), as amended, as a whole.

The draft resolution, as amended, was adopted by 38 votes to 5, with 5 abstentions.

The meeting rose at 6.25 p.m.

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Annex 13

Official Records of United Nations General Assembly, Fifth Session, 317th Plenary Meeting, 4 December 1950, 10.45 a.m., UN Doc. A/PV.317

United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

317th PLENARY MEETING

Monday, 4 December 1950, at 10.45 a.m.

Flushing Meadow, New York

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President: Mr. Nasrollah ENTEZAM (Iran).

Draft first international covenant on human rights and measures of implementation: report of the Third Committee (A/1559 and Corr.1)

[Agenda item 63]

Mr. Noriega (Mexico), Rapporteur of the Third Committee, presented the report of that Committee and the accompanying draft resolutions (A/1559 and Corr.1).

1. The PRESIDENT (*translated from French*): Before putting the three draft resolutions of the Third Committee to the vote, I shall recognize the various speakers who wish to explain their votes. I trust that speakers will confine themselves to the seven-minute time limit. The first speaker on my list is the representative of the Soviet Union.

2. Mr. MOROZOV (Union of Soviet Socialist Republics) (*translated from Russian*): The delegation of the USSR wishes to explain the motives which will guide it in voting on draft resolution I submitted by the Third Committee concerning the future work of the Commission on Human Rights.

3. The delegation of the Soviet Union considers that the Third Committee's draft does not stress the deficiencies of the draft covenant prepared by the Commission on Human Rights at its sixth session. Not only does it not contain enough concrete provisions which might be used as a basis for the further elaboration of the covenant, but it includes a number of incorrect proposals, which may mislead those who are to draft the various provisions of the covenant.

4. It was particularly necessary to point out those deficiencies because the draft covenant on human rights in its present form is an even less consistent and effective document than the Universal Declaration of Human Rights adopted by the General Assembly in 1948 [*resolution 217 A (III)*].

5. The delegation of the USSR pointed out at the third session of the General Assembly that the chief fault of that Declaration was its formal, legalistic character, since it confined itself to proclaiming a few human rights in an extremely general and incomplete form, without stating the ways and means of implementing these rights. Yet the effective implementation of human rights and fundamental freedoms is vitally important to millions of ordinary people.

6. The draft covenant not only contains all the faults of the Declaration, but it also omits any mention of certain rights which are vitally important to millions of people, such as the right to work, the right to social security, the right to leisure, the right to education and many other social, economic and cultural rights which are contained in the Universal Declaration of Human Rights, although in a proclamatory, unsatisfactory and incomplete form. As a result of these inadequacies of the draft covenant, the United Nations, two years after the adoption of the Universal Declaration of Human Rights, is even further from solving the problem of protecting and ensuring respect for human rights.

7. These circumstances make it incumbent upon the General Assembly not to confine itself to making provisions of an extremely general nature, but to point out these deficiencies to the Commission on Human Rights and to recommend concrete measures for remedying them.

8. With this object in view, the USSR has submitted the necessary amendments [*A/1576 and Corr.1*]. My delegation's vote on draft resolution I will depend upon the results of the consideration of these amendments, the purpose of which is as follows:

9. First, to ensure that all citizens, without distinction, have an opportunity to take part in the government of the State and therefore to abolish all restrictions, based on property, education, or anything else, on the right to take part in elections of candidates to representative organs, and to afford all citizens the opportunity of occupying any State or public office;

10. Secondly, to ensure the right of every people and every nation to national self-determination and to the development of their national culture;

11. Thirdly, to provide that the State should be obliged to guarantee to everyone the right to work and to choose his profession, so that conditions may be created in which the threat of death from hunger or exhaustion will be ruled out;

12. Fourthly, to ensure access to education without any discrimination whatsoever, and to ensure this by the provision of free elementary education and the organization of a system of scholarships and schools;

13. Fifthly, to ensure the right to rest and leisure by providing by law for a reasonable limitation of working hours and for periodic holidays with pay;

14. Sixthly, to introduce social security and social insurance for workers and employees at the expense of the State or at the expense of the employers, in accordance with the laws of each country;

15. Seventhly, to take all the necessary measures to ensure decent living quarters to every person;

16. Eighthly, to guarantee the strict observance of trade union rights and to create conditions in which the unhampered activities of trade union organizations can be ensured;

17. Ninthly, to ensure that the rights proclaimed in the covenant are not used for purposes hostile to humanity and, in particular, for purposes of war propaganda, for fomenting hostility among nations, for inciting to racial discrimination, or for spreading slanderous rumours;

18. Finally, to provide that the activities of any fascist or anti-democratic organization must be prohibited by law, subject to penalty.

19. But while the draft resolution submitted by the Third Committee omits many of the aforementioned important provisions, it contains proposals which can serve only to complicate the further elaboration of the covenant.

20. The delegation of the USSR, therefore, cannot vote for proposals such as that the Commission of Human Rights should be invited to continue to study the question of establishing a special system for the fulfilment by federal States of obligations undertaken under the covenant. The Soviet Union delegation can only interpret that proposal as an attempt to establish a pretext for not implementing the provisions of the covenant in the future.

21. We are also unable to agree to the proposal, allegedly intended to facilitate the implementation of the covenant, for the establishment of various international organs, such as a committee on human rights; such a measure would constitute interference in the internal affairs of States and a violation of their sovereignty, since the implementation of the provisions of the covenant in every State falls entirely within the domestic jurisdiction of the States signatories to the covenant and must allow for the specific economic, national and other characteristics of each country.

22. The delegation of the Soviet Union has therefore submitted its proposal for the modification of these sections and, should that proposal be rejected, it will vote against sections C and F in the form in which they have been submitted by the Third Committee.

23. The USSR delegation believes that it cannot be expected that the covenant should reproduce the principles and provisions of the constitutions of socialist States, such as the Soviet Union and the peoples' democracies, where the above-mentioned human rights are confirmed by law and are guaranteed in practice on the basis of the socialist system of social relations. It must be borne in mind that such legislation is possible in the USSR and in the peoples' democracies because all exploitation of man by man has been eliminated in these countries and a firm foundation has thus been established for the universal respect for and implementation of human rights. The position in capitalist countries is different, and that fact has to be taken into consideration in drafting the covenant of human rights.

24. In defining the future work of the Commission on Human Rights, the General Assembly cannot, of course, ignore the particular economic and social circumstances of the various States Members of the Organization, circumstances which prevent many of them, at the present time, from settling in a consistent and satisfactory manner the problem of establishing living conditions which are really worthy of human beings. The Soviet Union delegation considers, however, that even so, the General Assembly can recommend to the Commission on Human Rights that it should include in the covenant the aforementioned minimum rights, the implementation of which affects millions of people. This is particularly essential because it is impossible otherwise to state seriously that the draft covenant guarantees real, and not imaginary, human rights.

25. Hence, if the above-mentioned amendments are rejected and if the proposals contained in sections C and F are adopted, the delegation of the USSR will abstain from voting on draft resolution I and will reserve the right to submit, at the appropriate stage in the further elaboration of the draft covenant, its proposals for the radical improvement of that document.

26. Mr. COULSON (United Kingdom): The United Kingdom delegation feels obliged to vote against draft resolution I because we consider it both inadequate and impracticable.

27. We consider it inadequate because the General Assembly has not, in our view, given a satisfactory answer to the request of the Economic and Social Council [*resolution 303 I (XI)*] to give policy decisions on four important matters. One of these questions was the general adequacy of the measures of implementation in the draft covenant. Part F of this draft resolution fails to give such an answer.

28. We have two further reasons for considering this draft resolution impracticable. One is that it instructs the Economic and Social Council to insert articles dealing with economic and social rights. With regard to many of these, my delegation has an open mind; but many others we consider cannot possibly be included in this first covenant. The second reason is that we do not think that the Commission on Human Rights can do the task which the General Assembly is going to ask it to do within the specified time, without skimping its work and so producing a draft which would not be worthy of the United Nations.

29. On the question of the colonial application clause referred to in draft resolution II, I wish to explain quite simply why we are obliged to vote against it. It is the first duty of the United Kingdom Government to

guide our Non-Self-Governing Territories to responsible self-government within the Commonwealth. This we are doing. We shall not arrest the process of devolving upon the peoples of our territories the responsibility for conducting their own affairs. We shall therefore adhere in the case of the covenant to the normal practices and procedures which in such matters regulate the constitutional relationship between the United Kingdom and the territories for whose international relations we are responsible. That is to say, we shall consult them in this matter, but not dictate. The process of consultation will take time, and the effect of a decision by the General Assembly to delete a colonial application clause from the covenant may be to delay unduly the United Kingdom Government's accession to the covenant and the application of the covenant to several territories. If that were the result, it would be a consequence of the Assembly's decision and not of any action on the part of the United Kingdom Government.

30. Sir Keith OFFICER (Australia) : The Australian delegation will abstain in the vote on draft resolution I as a whole for the reason that, while we agree with some parts of it, we are opposed to others. This is due not only to our inability to agree with particular parts of the draft resolution but because, more than that, we feel that the draft resolution is not sufficiently precise in its form to be presented to the Commission on Human Rights as an authoritative and binding expression of opinion from the supreme organ of the United Nations. I am sure that many delegations share this view and believe that the draft resolution is long, repetitive and unwieldy.

31. Except in one or two respects, it fails to give the Economic and Social Council the basic policy decision which the Council sought. Indeed, the draft resolution seems to my delegation to go in the opposite direction and to confide to the Commission the study of matters extraneous to the field of human rights as such, and to propose the inclusion of rights which will certainly delay the drafting and final preparation of a covenant.

32. The Commission on Human Rights is, as we all know, a small body of eighteen experts. Certainly it is proper that this Assembly should give it general guidance and lay down policy in broad terms, but it seems to us unwise for the General Assembly to go further than this and to burden the Commission with rigid directions on detail and extraneous assignments, and all this at a time when the Commission is nearing the end of a first, though admittedly limited, achievement.

33. Section B of the draft resolution requires the Commission to take into consideration the inclusion in the covenant of economic, social and cultural rights, and that is a section of which we approve. But then, again, section E contains an express directive to the Commission to include such rights in the covenant. The basis of this latter directive was in essence those proposals which would seem to have been reasonably provided for under section B. The net result of such decisions, as we see it, is that the Commission will be making no immediate headway in its work.

34. Australia by no means contests the importance of the rights which are not included in the present eighteen articles, but we do recognize that for four years now the Commission has been working on the formulation of basic civil rights appearing in the existing articles. Moreover, the Commission decided last May[1] to complete this limited but basic first covenant and to go ahead with other instruments relating to such rights, particularly economic, social and cultural, as were not yet formulated. The decisions now recommended to the General Assembly appear to mean that progress is not contemplated in the short gradual steps by which we know all real progress is measured, but in one big comprehensive and probably very slow stride. This, we think, will not bring the results the supporters of the draft resolution hope to achieve. It must be remembered that the Commission is scheduled to meet for a session of only five weeks beginning in April. For these reasons we shall vote against part E.

35. The Australian delegation finds serious defects also in the reference in section F to implementation. We do not think that the question of individual and group petitions was fully and clearly considered, or that the whole question of implementation received the careful treatment it merited. Accordingly, we shall vote against section F as it now stands.

36. Another specific objection we have to the draft resolution is in respect of section D, where there is a directive to the Commission to study the whole question of self-determination. We shall abstain on this clause because we consider that self-determination is more in the nature of a group political right, not the sort of individual right with which the Commission is competent to deal.

37. We shall vote for sections G and H, which concern procedural matters.

38. Finally, my delegation is concerned about the omission of a colonial application clause, for this means that no real account has been taken of the constitutional difficulties which will face certain countries in the application of the covenant to the territories for which they are responsible. Therefore we shall vote against draft resolution II.

39. As to draft resolution III, we shall ask that it should be voted upon in two parts, because we wish the words "and interested organizations," in the last paragraph, to be omitted. We believe that such reporting is for governments and not for organizations. We shall vote against that paragraph as it stands, and if it is included we shall abstain on the vote on draft resolution III as a whole. If those words are omitted, we shall vote in favour of draft resolution III.

40. Although obliged to vote against parts of the text before us and to abstain on draft resolution I as a whole so long as the sections we object to remain in it, the Australian Government will continue to work to find common ground with other delegations, at the next session, so that the long efforts of the United Nations to draft and approve its first covenant on human rights will be successful.

41. Mr. NORIEGA (Mexico) *(translated from Spanish)* : I explained in the Third Committee,[2] on behalf of my delegation, why I had voted in favour of

[1] See *Official Records of the Economic and Social Council, Fifth Year, Eleventh Session,* Supplement No. 5.

[2] For the discussion on this subject in the Third Committee, see *Official Records of the General Assembly, Fifth Session, Third Committee,* 287th to 316th and 318th meetings.

draft resolution I, which is included in the Committee's report, in spite of the fact that it contained provisions with which I did not agree.

42. I explained that, after giving full consideration to the draft resolution, the Mexican delegation had come to the conclusion that its positive aspects outweighed the negative ones, with regard to which it wished to make reservations. On that condition, Mexico voted in favour of the draft resolution, and will do the same when the final vote is taken at this meeting.

43. However, I should like to refer particularly to section C of draft resolution I, in which the Economic and Social Council is called upon to request the Commission on Human Rights to study an article on federal States and to prepare for the consideration of the General Assembly, at its sixth session, recommendations whose purpose will be to secure the maximum extension of the covenant to the constituent units of federal States and to meet the constitutional problems of federal States.

44. My delegation maintains exactly the same attitude as regards this text as it did during the discussion in the Third Committee.

45. The so-called federal clause has all the characteristics of a reservation and of an escape clause. We know that such a clause is included in the machinery for implementation of the recent conventions of the International Labour Organisation. Its negative effects will be observed when it comes to carrying out the instruments which that agency establishes.

46. It was a tenet of the International Labour Organisation, before its Constitution was revised, that there should be no reservations in the conventions which it established.

47. Why was that? It was because conventions relating to social matters could not be subject to reservations, since such reservations provided loopholes which permitted differences to subsist in the various countries of the world with regard to the treatment of workers, standards of living, wage scales, etc., in other words, in all matters connected with labour conditions. The task of the International Labour Organisation is to bring about conditions for workers which are as uniform as possible throughout the world, in order to check the kind of competition which is injurious to the very life of the worker; hence the reservations to the conventions established by that agency were not accepted prior to the revision of its Constitution.

48. It was at the time when the Constitution of the International Labour Organisation was revised that the so-called federal clause made its first appearance on the international scene. The result will be that the conventions of the International Labour Organisation will not be uniformly implemented; they will be implemented partially in some States and in their entirety in others, according to the views or convenience of a particular government and to the extent that that government deems it advisable. This, of course, entirely destroys the operative force of a convention.

49. I have referred in detail to the repercussions of the federal clause on the implementation of conventions regarding labour because the covenant on human rights must also include economic and social rights, and it may be expected that the implementation of those economic and social rights, should they be included, will suffer in the same way if there is a federal clause.

50. Technically, the inclusion of a federal clause in the covenant on human rights would result in inequality between, on the one hand, non-federal States and federal States which automatically incorporate the provisions of a covenant in their national legislation and, on the other hand, those federal States which use the federal clause as a pretext for not implementing the covenant in its entirety throughout their territories.

51. I should like, therefore, to point out to those who hope that the covenant will be universally implemented that, if the federal clause is included, there will be many States which, in view of the privileged position of federal States which take advantage of the federal clause, will think twice before signing, ratifying or acceding to such a document.

52. You all know that the so-called colonial clause has been eliminated from the covenant. I do not intend to recapitulate here the noble and humane reasons on which this decision of the Third Committee was based. However, if a comparative study is made of the two clauses, the federal and the colonial, it will be seen that their character and purpose are identical, since in both cases it is left to the federal State or to the mother country to decide whether or not to make a convention applicable to any part of the territories under its jurisdiction and responsibility.

53. The difficulty which the Commission on Human Rights encounters in studying this matter and in arriving at a solution agreeable to all who are in favour of the federal clause has already been proved by two successive failures to draw up an agreed text. I referred, in the discussion in the Third Committee, to the difficulty experienced by the Third and Sixth Committees, at the preceding session of the General Assembly, in approving a federal clause; in point of fact, no text could be approved a year ago.

54. This difficulty in which the Commission on Human Rights is going to find itself will be even greater, given the scope of draft resolution II [*A/1559 and Corr. 1*], for under this draft resolution, which refers to the elimination of the colonial clause, federal States which are responsible for Non-Self-Governing Territories will automatically be deprived of the benefits of a federal clause. The text of draft resolution II runs as follows: "The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust, or colonial territories, which are being administered or governed by such metropolitan State." This makes it perfectly clear that federal States which are responsible for Non-Self-Governing Territories or Trust Territories will not be able to avail themselves of the federal clause.

55. I do not know how the Commission on Human Rights can produce a text which would be in direct contradiction with the text I have just read.

56. Mr. ALTMAN (Poland) *(translated from French)*: I should like to explain my delegation's vote on draft resolution I and on the amendments submitted by the USSR delegation [*A/1576 and Corr. 1*].

57. The Third Committee's task was to determine the policy and principles to be followed by the Commission on Human Rights in preparing the definitive draft covenant. It must be admitted that, in many respects, the Third Committee has not accomplished that task.

58. Although the Committee points out, in sub-paragraph *(a)* of section B of draft resolution I, "that the list of rights in the first eighteen articles of the draft covenant on human rights does not include some of the most elementary rights," and "that the present wording of some of the first eighteen articles of the draft covenant should be improved in order to protect more effectively the rights to which they refer", that same Committee failed in its duty to indicate clearly to the Commission on Human Rights what were the most elementary rights that should be included in the revised draft covenant and in what respect the present wording should be improved.

59. The Polish delegation is of the opinion that the rights included in the first eighteen articles of the draft covenant should be supplemented by the inclusion of such very elementary rights as the right of every citizen to take part in the government of the State, the opportunity to elect candidates and to stand for election to all government bodies, and the opportunity to hold any State or public office. Without such very elementary rights there is no effective guarantee of enjoyment of the other rights included in the draft covenant.

60. The right of every people and every nation to self-determination on a national scale, and the right of national minorities to use their mother tongue and have their own educational institutions and national cultures, are equally elementary.

61. We are of the opinion that the present wording of the first eighteen articles should be changed so that, while guaranteeing to every person his right to freedom of expression, assembly, public demonstration, parading, etc., there would be a clear statement that these rights could not be used for war propaganda or to incite racial discrimination or hatred among peoples, and that the propagation of fascist ideas in any manner would be prohibited by law.

62. Only if the question is dealt with in this way will there be conformity with the spirit and purposes of the Charter and with the principles of the Universal Declaration of Human Rights approved by the General Assembly on 10 December 1948 [*resolution 217 A (III)*].

63. The Third Committee decided to include economic, social and cultural rights in the covenant. That goes on the credit side of the Committee's work. On the other hand, the Committee refused to give precise instructions to the Commission on Human Rights as to the formulation of the elementary rights in the fields just mentioned. We believe that this is a very serious shortcoming in section E of draft resolution I submitted by the Third Committee to the General Assembly, and we believe that this shortcoming must be remedied by amplifying this section. It must deal with the right to work, the free choice of employment, the right to rest and leisure, the right to housing worthy of a human being, the right to social security, trade union rights, the right to education, and the duty of the State to guarantee the enjoyment of all these rights.

64. The most defective and, as it were, most unacceptable part of draft resolution I is section F. In this section, the Committee is supposed to give a reply to question whether the measures of implementation in articles 19 to 41 of the draft covenant are adequate. The Committee has refrained from giving a reply, although, according to many of its members, the measures are not adequate. The Polish delegation believes that articles 19 to 41 of the draft covenant should be deleted for the following reasons:

65. First, to retain them would result in an attempt to interfere in the internal affairs of States, which would be tantamount to a violation of their sovereignty;

66. Secondly, the implementation of the provisions of the covenant must be the exclusive responsibility of the governments concerned;

67. Thirdly, the setting up of the human rights committee discussed in the draft covenant would not only not strengthen the covenant but, on the contrary, would weaken it.

68. With respect to the implementation of the covenant, we demand direct responsibility on the part of States rather than an indirect procedure which would in fact hinder the application of the compulsory provisions of the covenant.

69. In our opinion, the General Assembly must correct the shortcomings of draft resolution I. It can do so by accepting the amendments submitted by the USSR delegation. The Polish delegation will vote in favour of those amendments. If they are not adopted, it will abstain from voting on draft resolution I as a whole.

70. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) (*translated from Russian*): The delegation of the Ukrainian SSR will explain how it proposes to vote on the draft resolution.

71. The question of the draft covenant on human rights and measures for its implementation was placed on the agenda of the current session of the General Assembly because the Commission on Human Rights, which had been drafting the covenant, had reached an impasse. The Economic and Social Council accordingly submitted a number of questions to the General Assembly, the answers to which were to guide the Commission in its future work.

72. A detailed examination of the draft resolution submitted by the Third Committee shows that, so far from giving clear and precise instructions to the Commission, the draft contains a number of basically wrong provisions which, if adopted by the General Assembly, could misdirect the endeavours of the Commission in preparing the covenant.

73. The Third Committee's draft resolution, for instance, contains no indication that the first eighteen articles of the covenant drafted by the Commission on Human Rights are unsatisfactory both as regards the enumeration of the rights to be included in the covenant and as regards the effective guarantee of the rights referred to in those articles. As we know, the first eighteen articles of the covenant contain no reference to most important human rights—the right to employment, recreation, social insurance, education,

national self-determination and other rights in the political, economic, social and cultural fields. Obviously, unless those rights are included in the covenant, unless governments are bound in practice to guarantee the enjoyment of rights and freedoms to their citizens, the covenant will always remain a dead letter, having no binding force for anyone. But the Third Committee's draft resolution contains no instructions to the Commission to include these provisions in the draft covenant on human rights.

74. The delegation of the Ukrainian SSR will therefore support the amendments proposed by the Soviet Union delegation to sections B and E of the draft resolution; those amendments contain a detailed list of the rights to be included in the covenant. My delegation regards those amendments as most important if the Commission on Human Rights is to succeed in drafting a covenant which will serve the purpose for which it is intended.

75. In the opinion of the delegation of the Ukrainian SSR, the recommendations contained in sections C and F of the Third Committee's draft resolution are directly contrary to the United Nations Charter and to the generally recognized principles of international law. Section C, for example, provides for the special application of the provisions of the covenant to the constituent units of federal States. The recommendations in that section are designed to deprive part of the population of federal States of the possibility of enjoying the rights embodied in the covenant and to place that part of the population at a disadvantage.

76. It is only just that a federal State signatory to the covenant should extend the provisions of that document, without any exceptions or restrictions, to all parts of the federation. That is the proposal made in the USSR amendment to section C, for which the delegation of the Ukrainian SSR will vote. If that amendment is rejected, it will vote against section C.

77. With regard to section F of the draft resolution of the Third Committee, which contains a recommendation concerning the so-called implementation of the provisions of the covenant, the delegation of the Ukrainian SSR considers that this recommendation is based on an erroneous concept of the methods and procedures to be used in implementing the provisions of the covenant and that it is therefore mistaken. In our opinion, the implementation of the provisions of the covenant is a matter which is entirely within the domestic jurisdiction of every State party to the covenant. That principle should, as the USSR amendment proposes, be expressed in the preamble to the draft resolution of the Third Committee.

78. The delegation of the Ukrainian SSR supports the proposal of the Soviet Union that articles 19 to 41 should be deleted from the covenant drafted by the Commission on Human Rights on the ground that they have no connexion with measures for the implementation of the provisions of the covenant and aim at permitting interference in the domestic affairs of sovereign States.

79. In the opinion of the delegation of the Ukrainian SSR, the Commission on Human Rights can successfully carry out its task of preparing a covenant on human rights only if the General Assembly adopts a resolution embodying the USSR amendments, which contain clear and precise instructions for the drafting of the covenant. The delegation of the Ukrainian SSR will therefore vote for the Soviet Union amendments and, if those amendments are not adopted by the General Assembly, it will abstain from voting on the draft resolution submitted by the Third Committee.

80. Mr. DE LACHARRIERE (France) *(translated from French)*: As I may speak for only a limited time, I shall confine the explanations of my delegation to the first—and most important—of the draft resolutions referred to us by the Third Committee.

81. This lengthy draft most certainly contains a number of quite acceptable things in favour of which my delegation would be prepared to vote.

82. Nevertheless, taken as a whole, the text has some serious defects. In the first place, it is wordy and vague in form, and contains a number of repetitions, loosely connected proposals and poorly drafted phrases; some of the statements made in it are quite superfluous and, at times, the text is sheer verbiage. But even more serious than the superfluous statements are the contradictions to be found in the text before us.

83. Inelegance of style is accompanied by incoherence of thought. The most flagrant example of this is to be found in the contradiction between section B and section E. In the former, the problem of economic and social rights is resolved in one way, in the latter, in another. Section B provides that the views on the subject contained in the Yugoslav and Soviet Union proposals should be transmitted to the Commission for discussion and decision; that is one solution. Yet section E provides for the adoption in full of the Yugoslav proposal; that is another solution, which is clearly in contradiction with the first.

84. Such incoherence naturally weakens the draft resolution. At the same time, the draft includes provisions which are dangerous because they are the outcome of over-ambition. Immediately, at a single stroke of the pen, all rights—economic, social, cultural—are to be included in the first draft covenant, as though the subject were not vast and complex, and as though it were not obvious that to do so makes it almost impossible for the Commission on Human Rights to carry out its task if, that is, it is expected to do serious work. There is no right with which the Commission is not called upon to deal, even the right of peoples to self-determination, although we all know that that right involves an extremely broad political principle already covered by other provisions, by those of the Charter itself which define the powers of the various organs of the United Nations, including the Security Council and the Trusteeship Council.

85. On the one hand, the covenant is overloaded in this most unwise fashion; on the other hand, we are unpleasantly surprised to find that, with regard to implementation, the draft resolution is very weak—extremely weak—empty and, indeed, practically useless.

86. All the various proposals concerning implementation made in the Third Committee are referred to the Commission on Human Rights pell-mell, despite their divergent nature, despite the fact that they have not been discussed, despite the fact that the conflicting views on this subject have not been reconciled—in

other words, despite the fact that one of the principal questions which the Economic and Social Council put to the General Assembly on this essential point has been left unanswered.

87. In addition, these proposals concerning implementation are referred to the Commission together with a statement which appears to indicate that they refer only to petitions, whether individual or collective, to the exclusion of complaints submitted by States themselves. Yet we know that it would seem that, for the time being at least, measures of implementation can be taken only in respect of complaints submitted by States. Thus there is practically no provision for implementation.

88. This profusion of clauses on the one hand, and the extreme weakness of the covenant—not to say its complete lack of any provisions on implementation—on the other hand, offer a really very unfortunate contrast. That, in the opinion of my delegation, is the most serious defect of this draft resolution, that is what arouses our most serious objection to it.

89. The covenant must not be another version of the Universal Declaration of Human Rights. Either it is nothing at all or it is a legal instrument embodying specific and agreed obligations. The commitments entered into should be weighed with care. It is necessary to go forward, even if the rate of progress is slow, but is is also necessary to take into account the legal consequences of implementing such commitments; otherwise the covenant will be meaningless.

90. No, I am wrong; it could have a meaning if the only purpose of having such a covenant were to secure some political and propaganda advantage by means of oft-repeated democratic slogans. It could have a meaning if the only purpose were to use a phraseology savouring of progress as a cloak for continuing the old errors of the policy of the reason of State. The vanity of a resolution such as this would, perhaps, be justified if it simply met the intentions of governments which wished to pay a harmless tribute to the human rights proclaimed in the Charter, a verbal tribute which could be very strong but which safeguarded the traditional policy of not allowing individuals access to the international community. I cannot believe that that would be the intention of any delegation. Yet that is practically the only construction that can be placed on the empty and controversial draft resolution now before us. The French delegation is therefore unable to accept the proposed text.

91. France, from the very beginning, has given its ardent and purposeful support to the building up of the great international edifice of human rights; it has pursued that task with a conviction which I would almost call personal and which goes back to the Declaration on the Rights of Man, which it drew up in 1789, not for French nationals alone but for the citizens of the whole world; it desires that the principles embodied in the Charter should really be put into practice. It is for all these reasons that the French delegation will not vote in favour of the draft resolution now before us.

92. Mr. CASSIMATIS (Greece) *(translated from French)*: In voting on the three draft resolutions submitted by the Third Committee, and on the amendment submitted by the USSR delegation, we shall be guided by our conscience.

93. That will permit us to vote for draft resolution III without any hesitation. The wording of draft resolution II, however, is such that we are compelled to abstain from voting on it. Although it directly expresses an ideal which we cherish, the necessary measures have unfortunately not yet been taken to ensure its effective application. Without them, the resolution would be purely academic.

94. Draft resolution I, which deals with the provisional text of the draft international covenant on human rights and the future work of the Commission on Human Rights, has given rise to serious problems. The Committee's long and arduous discussions have shown that there are two points of view on the question.

95. The first point of view takes two essential factors into account.

96. In the first place, as the representative of France has just pointed out, it is now a question of drafting a legally binding covenant and not just a declaration with psychological and moral significance. A declaration of this kind has already been adopted and the world is about to celebrate its second anniversary to the noise of murderous guns. The purpose of the covenant we are called upon to draft should be to implement the rights already proclaimed. It must accordingly be drafted with all the care due a universal covenant which is intended to be carried out, and must not be confined to the enunciation of simple precepts, which, as everyone knows in advance, cannot be put into practice in certain countries; those countries, I am proud to say, do not include my own.

97. Secondly, this point of view recognizes the need to take into account the evolution of moral and political ideas on the subject of human rights. Much blood has been shed since the French Revolution proclaimed the rights of man and the citizen, while leaving their implementation dependent on the caprice of national law. The conscience of the peoples now demands international protection of universally recognized rights, a protection not dependent on the good will of governments. Without that protection, free men would be left to lament the futility of their sacrifices. Limited rights, enjoyed by as many people as possible, but rights which are real and are really observed—that is what an honest, sincere and realistic conscience demands.

98. But there is also another point of view. Those who hold it take advantage of this question—as of so many others — to make propaganda, to advocate the widest possible — but entirely theoretical — extension of human rights, and to give the appropriate commission a task which it cannot possibly carry out. At the same time, they reserve the sovereign right of every State to leave the most elementary human rights on paper without seeing that they are observed — elementary rights such as the right to choose freely among different political parties or the right to the free choice of employment.

99. We regard the clause proposed in the USSR amendment, under which the implementation of the provisions of the international covenant on human

rights would be a matter for governments, as a negation of those rights and as the most glaring manifestation of a reactionary and anachronistic point of view.

100. This second point of view opens the door wide to demagogy; unfortunately it has had the support of men of good will, who have consented to embark on the path of unreality. Draft resolution I is the result.

101. We must shoulder our responsibilities in the face of these facts. At the height of an international crisis on the outcome of which perhaps the peace of the world and certainly the fate of the United Nations depends, Greece, realizing that it is its duty not to let itself be influenced by danger or demagogy, cannot associate itself with a resolution which appears to mark an advance but in fact merely postpones the day when real human rights are effectively and universally protected. My delegation will abstain from voting on draft resolution I as a whole because it will not bow to the will of those who, so far from serving human rights, wish to make use of them for propaganda purposes.

102. If, however, the draft resolution is voted on in parts, we shall vote for certain clauses for which we voted before in the Third Committee.

103. In any event, Greece will do its utmost to remove the obstacles which draft resolution I puts in the way of the effective protection of human rights; it will do its utmost to promote the universal application of those rights and to ensure their protection. That is and always has been our ideal.

104. Mr. HOFFMEISTER (Czechoslovakia): The Czechoslovak delegation voted in the Third Committee and will vote in the Assembly for draft resolution II, on the territorial application of the international covenant on human rights. This draft contains an unequivocal directive to the Commission on Human Rights and, in this way, corresponds to the demands for basic policy decisions.

105. Further, the Czechoslovak delegation will cast its vote in favour of draft resolution III, which refers to Human Rights Day.

106. On the other hand, it has been extremely difficult for our delegation to decide how to divide its vote among the constructive and clear provisions contained in the draft international covenant on human rights and the less clear and certain unacceptable formulations. Sometimes we had the impression that the statements made in the Committee were influenced by the political situation and the news from the battle front. But this covenant is not being drafted for use at this very hour, nor for the salvation of the past; this international covenant should be ahead of time, at least ahead of our time. And, in that, we may find the kernel of misunderstanding as to the concept of the draft before us, which has resulted in rather regrettable shortcomings.

107. The attempt to include a federal clause has aroused much suspicion, and we have noted the stubborn struggle of the United States delegation to have it included in the draft covenant. We could not help but hear, in the interventions of the United States delegation, a certain accent and a vague hope of evasion of the provisions prohibiting discrimination. All of us being equal, great or small, we cannot accept the introduction of a preferential system for federal States claiming equal sovereignty but only a conditional responsibility.

108. The most inadequate part of draft resolution I, a draft which concerns, *inter alia,* measures of implementation of the covenant on human rights, is precisely the entire part dealing with implementation. A covenant on human rights must necessarily invite States to provide for the inclusion, in their constitutions or in their national or local legislations, of provisions contained and defined in the covenant. I think the majority in the Assembly agrees with my delegation on this point. Yet articles 19 to 41 are quite inadequate, since the implementation of the provisions of the covenant are regarded in those articles solely from one individualistic point of view; they are concerned only with questions of procedure, omitting this primary and essential condition for the effectiveness of the measures in question. The provisions on implementation should be binding and should force the States to act in accordance with the obligations they have undertaken by the very act of ratifying the covenant by adapting their legislations to include all the rights of individuals listed in the covenant.

109. I do not wish to pile up arguments for this clear and firm attitude, which any State with a clear conscience in regard to human rights can take, because we think it is the simplest, most effective and most logical way of implementing an international covenant.

110. The often quoted authority on international law, Professor Lauterpacht, states in chapter XVI of his book *International Law and Human Rights:*

> "The preoccupation with the enforcement of the Bill of Rights ought not to conceal the fact that the most effective way of giving reality to it is through the normal activity of national courts and other organs applying the law of the land."

111. For these reasons, the Czechoslovak delegation finds that the proposal of the delegation of the Soviet Union [*A/1576 and Corr. 1*] for the deletion of articles 19 to 41 from the draft international covenant on human rights, since their inclusion would constitute an attempt at intervention in the domestic affairs of States and would encroach on their sovereignty, is the best solution of this problem, which can be settled by the mere fact of ratification of the covenant by a signatory State and by the incorporation of the provisions of the covenant in the legislation of that State.

112. The Czechoslovak delegation, therefore, will support the amendments proposed by the USSR delegation. Should those amendments not be accepted, the Czechoslovak delegation feels that it will not be in a position to vote for draft resolution I as a whole, and will abstain from voting.

113. Mr. AZKOUL (Lebanon) *(translated from French)*: At first sight the draft resolution submitted to us by the Third Committee seems progressive, for it invites the Commission on Human Rights to go forward with its work. My delegation, and all those who have closely followed the progress of the Commission's work are aware, however, that this draft is an obstacle to the advancement of work on human rights and is, indeed, a step backwards.

114. The question of the proclamation and observance of human rights has a long history in the United

Nations and its various organs. Like the world, it began in a nebula. That nebula was a vague and general idea of a single text which would include everything concerning human rights. After the Commission on Human Rights had set to work and faced the facts and the difficulties, some clear ideas began to take shape in the nebula.

115. The first clear idea which emerged from the Commission's proceedings was that there should not be a single document containing everything relating to human rights, but several documents. That gave rise to the idea of a separate, independent declaration of human rights and a separate, independent covenant on human rights.

116. When it had completed the first document—the Universal Declaration of Human Rights—the Commission began work on the international covenant on human rights. Facing the real issues and examining them carefully, we again found that the covenant, too, was nebulous. At first, it was to have included all the rights stipulated in the Declaration, regardless of the special circumstances, conditions or characteristics distinguishing a covenant from a declaration. Little by little a number of clear ideas have emerged out of the nebulous idea of an all-embracing covenant.

117. The first is that it is impossible to include in the covenant, immediately and simultaneously, all the rights enunciated in the Declaration. The second is that it is necessary to take into account the specific character of the covenant, which distinguishes it in nature and in scope from the Declaration. The third is that there must be several covenants and documents, each concerned with a particular category of rights. The fourth is that the first task must be to draft the articles or rights which are the easiest to formulate and the most likely to be accepted immediately by the international community, the rights which require the least contribution from other United Nations organs and the specialized agencies. Accordingly the Commission on Human Rights envisaged a first covenant devoted to personal rights.

118. The Third Committee's decision thus amounts to requesting the Commission on Human Rights to turn back to the nebulous, the confused and the vague, in other words, to something which can be neither achieved nor implemented. What is general can have no reality unless it is reduced to its separate, specific and distinct component parts.

119. Draft resolution I submitted by the Third Committee invites the Commission on Human Rights to disregard its own experience and all the difficulties it encountered during its practical study of the question of the covenant on human rights, to forget the special nature of the covenant—an international contract to be signed voluntarily by nations—and to forget that economic, social and cultural rights differ from personal and civil rights in the sense that their implementation implies the existence of economic, political and social conditions which do not depend merely on the will of authorities or governments. The draft resolution asks us to forget realities and return to the first vague and nebulous generalizations.

120. This tendency, which does not take sufficient account of the need for a covenant signed by the largest possible number of States and implemented by them, appears in its most extreme form in the amendments submitted today by the USSR delegation. But for that delegation that is a normal and logical attitude. After calling for the deletion of provisions on implementation, after saying that the responsibility for seeing that the provisions on human rights are observed should not rest with the United Nations, and after setting aside the means of supervising the observance of those rights, it is easy to pose as the champion of human rights throughout the world and to call for the inclusion in the covenant of every conceivable right. But if anyone honestly and sincerely desires to sign a covenant, he will not oppose a covenant which guarantees even a single right; if at least that one right were observed in the world, that would be a step forward.

121. In the circumstances, my delegation has no other choice than between the following alternatives: either that the Commission on Human Rights should be requested to draft the first eighteen articles and then leave them aside and start work on the other articles; or that the Commission should be requested to complete the first eighteen articles and transmit them to us for adoption and presentation to States for signature, and then immediately start work on the other articles.

122. As my delegation is anxious that the United Nations should make progress in its study of human rights, it can only vote in favour of the second alternative, that is, not to shelve the first eighteen articles and wait indefinitely—perhaps until the others are drafted—but to refer them immediately to the General Assembly so that we may have a first covenant straightaway and others later, instead of trying to include everything in a single covenant which could never be concluded.

123. Having to choose between these two alternatives, my delegation will vote in favour of preparing, first, a covenant devoted to personal rights, and then of starting, immediately and without delay, on the drafting of covenants concerning the other human rights, until one day we have the full list of those rights, which would then be safeguarded in an effective and practical manner.

124. Therefore we shall at least abstain from voting on the decisions taken by the Third Committee, and shall vote against the amendments proposed by the Soviet Union, because both the Third Committee's proposals and the USSR amendments would retard the work done by the Commission on Human Rights in this field, and prejudice the progress already made.

125. Mr. GARCIA BAUER (Guatemala) *(translated from Spanish)*: When the draft resolution on the covenant on human rights submitted by the Third Committee is put to the vote as a whole, my delegation will support it. I should like, however, to make a few comments on certain paragraphs of that draft.

126. My delegation has given serious consideration to section C, concerning a federal clause. Such a clause is clearly contrary to traditional legal doctrine. But my delegation has also carefully examined the arguments raised by some delegations, and chiefly by the United States delegation, concerning the serious difficulties of implementing a covenant in all the States of a federation.

127. On the other hand, my delegation has watched with sympathetic interest the efforts of the United States Federal Government to make human rights prevail throughout its territory. That being so, my delegation cannot but give serious attention to this problem of the federal clause.

128. We shall therefore support section C, which calls upon the Commission on Human Rights to study the question of the federal clause.

129. As regards section E, which refers to the inclusion of economic, social and cultural rights in the first covenant on human rights, we have grave doubts as to the desirability of including those rights in the covenant at this stage. The economic, social and cultural rights listed in the USSR amendment [*A/1576 and Corr. 1*] and in the Universal Declaration of Human Rights, are included in the Constitution of my country, in force since 1945; accordingly we should have no objection to their inclusion in the first covenant on human rights. However, our concern is lest we jeopardize the whole question of the international protection of human rights by going too far at this stage.

130. Consequently my delegation does not wish to commit itself at present; it will reserve its position pending a final decision of the Guatemalan Government on this point. It will abstain from voting on that section of the draft resolution at this meeting, and, as a member of the Commission on Human Rights, it will announce its position in the matter when the question is discussed in the Commission.

131. My delegation attaches the greatest importance to section F, on the implementation of human rights; it would have liked the Assembly to give a more definite reply to the question of the Commission on Human Rights concerning that point. Nevertheless, despite the indefinite character of the reply and the form in which it is made, my delegation is prepared to support that section. We know that the Commission on Human Rights will examine the General Assembly's recommendations with its customary care, and will take the most appropriate decisions.

132. Draft resolution II concerns the so-called colonial clause; the Guatemalan delegation will support that draft. We have always opposed the colonial clause. We do not see any reason why the provisions of the covenant should not be applicable to all States, whether self-governing or not; States which have difficulties in ratifying the covenant on behalf of non-self-governing territories which they administer have other ways of achieving the desired result, without there being any need for a colonial clause. The Guatemalan delegation took the same attitude with regard to that clause when other documents were being discussed.

133. My delegation, as it explained in the Third Committee, strongly supports draft resolution III, in which all States and interested organizations are invited to adopt 10 December of each year as "Human Rights Day" and observe that day to celebrate the proclamation of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948.

134. We shall vote against the USSR amendment [*A/1576 and Corr. 1*] calling for the insertion, between the third and fourth recitals in draft resolution I, of a recital to the effect that the implementation of the provisions of the covenant on human rights falls exclusively within the domestic jurisdiction of States. We do not consider that in the present state of progress in international law, when the United Nations Charter refers no less than seven times to human rights, when it includes such definite provisions on them, when efforts are being made on every side to ensure the observance of human rights and their universal recognition, we do not feel that we can now take a step backwards and say that the question of human rights is a matter solely of domestic jurisdiction.

135. Those were the comments I wished to make; as I said in the beginning, when the General Assembly comes to voting on the Third Committee's proposal as a whole, the delegation of Guatemala will support it.

136. Mr. KUSOV (Byelorussian Soviet Socialist Republic (*translated from Russian*): The delegation of the Byelorussian SSR deems it essential to explain how it will vote on draft resolution I.

137. This draft resolution is unsatisfactory. It does not bring out the inadequacies of the first eighteen articles of the draft covenant and does not give the Commission on Human Rights proper or specific instructions as to what it should do in order to eliminate the basic defects of the draft covenant.

138. The delegation of the Byelorussian SSR considers the main defect of the draft covenant to be that it does not include many extremely important provisions guaranteeing human rights and fundamental freedoms. It contains, for instance, no mention of the right to employment, to education, to leisure, to social security and to housing fit for human beings. It contains no provisions on the trade union rights of citizens and makes no mention of equal rights for women in all aspects of the political, economic, social and cultural life of nations. We find no mention, either, of democratic principles in the government of States. There is no article in the draft covenant on the right of peoples and nations to self-determination; but there can be no hope for the observance of any other human rights and freedoms unless peoples and nations are given an opportunity of deciding their own fate.

139. The drafting of the first eighteen articles of the covenant is inadequate, and does not fully ensure the rights to which those articles relate. Those articles proclaim rights and freedoms, but do not guarantee their implementation. The draft covenant not only constitutes no advance in extending fundamental rights and freedoms to peoples; it is a step backwards. It is much weaker than the Universal Declaration of Human Rights which, as we know, is seriously defective.

140. The General Assembly is thus confronted with the serious problem of giving the Commission on Human Rights specific and clear instructions enabling it to draft a covenant which will meet the needs and aspirations of hundreds of millions of working people.

141. Does the draft resolution approved by the Third Committee, which is now before us, give the Commission such instructions? As we have already stated, this draft resolution not only fails to give the necessary instructions; but it also contains certain incorrect proposals which, if approved by the General Assembly, are liable to give a wrong direction to the drafting of many provisions of the covenant.

142. Thus section C of the draft resolution provides for the inclusion in the covenant of a special article on the application of the covenant in federal States. Clearly, the inclusion of such a provision in the covenant could be used to evade discharge of the delegations assumed under the covenant. Section E does not adequately indicate what specific economic, social and cultural rights should be included in the covenant. Section F, which recommends the inclusion in the covenant of an article on its implementation, is directly contrary to the United Nations Charter. The problem of the implementation of the covenant, which is a matter within the domestic jurisdiction of each State, is dealt with by setting up various international control and pressure organs. Such articles cannot be included in the covenant, for that would be an endorsement of the right to interfere in the internal affairs of States.

143. The draft resolution under discussion must be substantially amended and amplified by including in it the concrete proposals contained in the amendments proposed by the Soviet Union to sections B, C, E, and F as well as to the preamble of the draft resolution. The delegation of the Byelorussian SSR supports those amendments and will vote for their inclusion in the draft resolution. We support them because they give clear instructions for the future work of the Commission on Human Rights and are calculated to speed up the elaboration of the draft covenant, which should contain not only a proclamation of the fundamental rights and freedoms of citizens, but also guarantees that every State, in accordance with its particular internal circumstances, will observe those rights.

144. The representative of Greece, speaking from this rostrum, was frightened by the clear and concrete proposals contained in the USSR amendments. He considered that they were unreal, propagandistic, and demagogic, and he also said that the Greek people enjoyed all rights. The representatives to the General Assembly and the peoples of the world are, I am sure, aware of the rights enjoyed by the Greek people. They are the rights of the monarcho-fascist régime, the unlimited right to terrorize, to imprison people and keep them in concentration camps and to execute innocent people without trial. The representative of Greece believes that these rights, the rights to oppress the people, are precisely what the people need. That is why he considers that Greece serves as an international example in respect of the observance of human rights. The Greek representative's statement merely serves to confirm the views of many delegations on the kind of covenant on human rights they would like to have, namely, a covenant which would include eloquent declarations of human rights, but which would not enable the peoples to enjoy those rights.

145. By adopting the Soviet Union amendments, the General Assembly will not only substantially improve the draft resolution before us, but will supply all the necessary recommendations for drafting a covenant on human rights which will meet the needs and aspirations of the vast majority of humanity.

146. That is why the delegation of the Byelorussian SSR will vote for the inclusion of these amendments in the draft resolution submitted by the Third Committee. If these amendments are not adopted by the Assembly, our delegation will abstain from voting on the draft resolution as a whole.

147. The PRESIDENT *(translated from French)*: The list of speakers who wish to explain their delegations' votes is exhausted. We shall now go on to the vote.

148. I propose that there should be a separate vote not only on each draft resolution, but also on the different parts of each draft. Some delegations have requested such division, and, moreover, that would facilitate the President's task in putting the various amendments to the vote.

149. Let us first take draft resolution I. The USSR delegation has proposed an amendment [*A/1576, paragraph 1*] to the preamble.

150. Mr. GARCIA BAUER (Guatemala) *(translated from Spanish)*: I request a roll-call vote on the first amendment of the Soviet Union.

A vote was taken by roll-call.

Iraq, having been drawn by lot by the President, was called upon to vote first.

In favour: Mexico, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Afghanistan, Byelorussian Soviet Socialist Republic, Czechoslovakia.

Against: Lebanon, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Greece, Guatemala, Haiti, Honduras, Iceland, India.

Abstaining: Iraq, Pakistan, Saudi Arabia, Syria, Uruguay, Venezuela, Yemen, Yugoslavia, Argentina, Burma, Egypt, Ethiopia, Indonesia, Iran.

The amendment was rejected by 37 votes to 7, with 14 abstentions.

151. The PRESIDENT *(translated from French)*: I put the preamble to draft resolution I to the vote.

The preamble was adopted by 52 votes to none, with 3 abstentions.

152. The PRESIDENT *(translated from French)*: We shall go on to section A, to which there is no amendment. The USSR representative has requested that the vote should be taken in parts. I accordingly put the first paragraph to the vote.

The first paragraph was adopted by 51 votes to none, with 6 abstentions.

153. The PRESIDENT *(translated from French)*: I now put the second paragraph of section A to the vote.

The second paragraph was adopted by 56 votes to 1.

154. The PRESIDENT *(translated from French)*: I put section A as a whole to the vote.

Section A was adopted by 53 votes to 1, with 5 abstentions.

155. The PRESIDENT (*translated from French*): We shall go on to section B of draft resolution I. The USSR delegation has proposed an amendment [*A/1576, paragraph 2*] to sub-paragraph (*a*). I put that amendment to the vote.

The amendment was rejected by 40 votes to 7, with 5 abstentions.

156. The PRESIDENT (*translated from French*): Since the amendment has been rejected, I put section B to the vote.

Section B was adopted by 49 votes to none, with 5 abstentions.

157. The PRESIDENT (*translated from French*): With regard to section C, an amendment [*A/1576, paragraph 3*] has been submitted by the USSR delegation.

I put that amendment to the vote.

The amendment was rejected by 36 votes to 7, with 9 abstentions.

158. The PRESIDENT (*translated from French*): I put section C, as drafted by the Third Committee, to the vote.

Section C was adopted by 37 votes to 7, with 3 abstentions.

159. The PRESIDENT (*translated from French*): No amendment has been submitted to section D. I put that section to the vote.

Section D was adopted by 30 votes to 9, with 13 abstentions.

160. The PRESIDENT (*translated from French*): With regard to section E, the Soviet Union delegation has submitted an amendment [*A/1576, paragraph 4*] comprising thirteen paragraphs to sub-paragraph (*a*), as well as an amendment [*A/1576, paragraph 5*] to sub-paragraph (*b*). Does the USSR delegation wish me to put these paragraphs to the vote separately or as a whole?

161. Mr. MALIK (Union of Soviet Socialist Republics): As a whole.

The amendments were rejected by 41 votes to 6, with 6 abstentions.

162. The PRESIDENT (*translated from French*): I put section E, as drafted by the Third Committee, to the vote.

Section E was adopted by 35 votes to 9, with 7 abstentions.

163. The PRESIDENT (*translated from French*): The USSR delegation has submitted an amendment [*A/1576, paragraph 6*] to section F. I put that amendment to the vote.

The amendment was rejected by 43 votes to 5, with 9 abstentions.

164. The PRESIDENT (*translated from French*): I put section F, as drafted by the Third Committee to the vote.

Section F was adopted by 31 votes to 14, with 9 abstentions.

165. The PRESIDENT (*translated from French*): No amendments have been submitted to sections G and H. I put those sections to the vote.

Section G was adopted by 54 votes to none, with 1 abstention.

Section H was adopted by 52 votes to none, with 1 abstention.

166. The PRESIDENT (*translated from French*): Before putting draft resolution I as a whole to the vote, I call upon the representative of Mexico, who wishes to speak either on a point of order or as Rapporteur of the Third Committee.

167. Mr. NORIEGA (Mexico) (*translated from Spanish*): I propose to speak not as Rapporteur, but in order to explain my vote.

168. My delegation desires that the official record of this meeting of the General Assembly should make it absolutely clear that Mexico has not been inconsistent in voting in favour of the first amendment of the Soviet Union, which reads: "Recognizing that the implementation of the provisions of the Covenant on Human Rights falls entirely within the domestic jurisdiction of States", and in abstaining from voting on the amendment to section F, which reads: "Considers that articles 19 to 41 of the draft covenant should be deleted, since their inclusion would constitute an attempt at intervention in the domestic affairs of States and an encroachment on their sovereignty".

169. I am sure that all the delegations here present agree that the implementation of the provisions of the international covenant on human rights is a matter which is solely within the domestic jurisdiction of States; indeed, as signatories to the covenant, they assume responsibility for ensuring its implementation in their territories. It is clear that because of that responsibility, the question of the extent to which States desire to co-operate with other signatory States in ensuring the widest possible observance of the rights recognized in the covenant is a question which must be decided by each State individually, as an act of national sovereignty.

170. The PRESIDENT (*translated from French*): I shall put draft resolutions I and II as a whole to the vote in succession.

Draft resolution I as a whole was adopted by 38 votes to 7, with 12 abstentions.

Draft resolution II was adopted by 36 votes to 11, with 8 abstentions.

171. The PRESIDENT (*translated from French*): We shall now go on to vote on draft resolution III.

172. The Australian delegation proposes that the words "and interested organizations" should be deleted from the last paragraph of the draft resolution. The beginning of the last paragraph of draft resolution III, thus amended, would read: "Invites all States to report annually . . . ".

The amendment was adopted by 25 votes to 10, with 19 abstentions.

Draft resolution III, as amended, was adopted by 47 votes to none, with 5 abstentions.

The meeting rose at 1.20 p.m.

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Annex 14

Extracts from the Mauritius Gazette, General Notices (General Notice No. 76 of 3 February 1951; General Notice No. 895 of 18 October 1952; General Notice No. 684 of 26 June 1953; General Notice No. 503 of 4 July 1953; General Notice No. 839 of 19 October 1957; General Notice No. 149 of 8 February 1963; General Notice No. 271 of 20 March 1964; General Notice No. 447 of 28 April 1964; General Notice No. 1011 of 29 October 1964; General Notice No. 406 of 23 April 1965)

OBITUARY NOTICE

CLAUDE PHILIPPE JEAN SALIMAN, Second Class Teacher, Government Primary Schools, Education Department, died on 14th January, 1951.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

General Notice No. 75 of 1951.

APPOINTMENTS

(M.P. 4058)

JOSEPH ANDRÉ D'ESPAGNAC, to be Chief Officer, Fire Services, with effect from the 1st of January, 1951.

(P.F. 5068)

PHILIPPE BENJAMIN OHSAN, Inspector, Police Department, to be Bandmaster, with effect from the 1st of July, 1950.

ARRIVAL AND RESUMPTION OF DUTY

(P.F. 5068)

PHILIPPE BENJAMIN OHSAN, Bandmaster, Police Department, 11th January, 1951, from leave.

REVERSION TO SUBSTANTIVE APPOINTMENT

(M.P. 4058)

C. G. DECOTTER, Station Officer, Fire Services, 1st January, 1951.

By direction of His Excellency the Governor.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

General Notice No. 76 of 1951.

(M.P. 11810)

APPOINTMENT IN THE MAGISTRACIES

His Excellency the Governor has been pleased to appoint Mr. J. Desplaces, Attorney-at-Law, to act as Magistrate for Mauritius and the Dependencies and has assigned to him the Lesser Dependencies with effect from the date of the departure of the next vessel for Chagos Archipelago.

By direction of His Excellency the Governor.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

(P.F. 12096)

—, Officer in charge of the Malaria Eradication Scheme, 2nd October, 1952, on leave.

REVERSION TO SUBSTANTIVE APPOINTMENT

F. NOZAIC, Assistant Registrar General, 7th October, 1952. (P.F. 1315)

E. GÉRARD, Taxing Officer, Registrar General's Department, 7th October, 1952. (P.F. 1315)

H. H. HARGREAVES, Superintendent of Prisons, 7th October, 1952. (P.F. 12140)

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 892 of 1952. (M.P. 12345/55)

CHANGE OF NAME

His Excellency the Officer Administering the Government in Council has been pleased to authorise SOOROOJPERSAD BHOLAH to change his name and surname into those of RAMCHANDAR REECHAYE.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 893 of 1952. (M.P. 12427)

LAND SETTLEMENT ADVISORY COMMITTEE

His Excellency the Officer Administering the Government has been pleased to appoint Dr. the Honourable S. Ramgoolam and the Honourable V. Ringadoo to be additional members of the Land Settlement Advisory Committee.

2. This Committee is now composed as follows :—

The Land Settlement Officer, *Chairman*
The Civil Commissioner (South),
The Civil Commissioner (North),
The Civil Commissioner (Moka—Flacq),
The Director of Public Works (or his representative),
The Liaison Officer for Agriculture and Fisheries,
The Honourable D. Luckeenarain,
The Honourable A. M. Osman, O.B.E.,
Dr. the Honourable S. Ramgoolam,
The Honourable V. Ringadoo,
The Honourable J. N. Roy,
The Honourable H. R. Vaghjee.

The Secretariat,
Mauritius, 15th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 894 of 1952. (M.P. 1746)

SACK FACTORY BOARD

With reference to General Notice No. 251 of 1952, His Excellency the Officer Administering the Government has been pleased to appoint Mr. R. Lincoln to be a member of the Sack Factory Board, in the place of Mr. Serge Staub during his absence on leave.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 895 of 1952. (M.P. 9719/2)

APPOINTMENT IN THE MAGISTRACIES

His Excellency the Officer Administering the Government has been pleased to appoint Mr. Jacques André Cyril Cantin, Barrister-at-Law, to act as Magistrate for Mauritius and the Dependencies with effect from the date of the departure of the "Sir Jules" from the Chagos Islands.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 680 of 1963.

LEGAL SUPPLEMENT

The undermentioned Government Notices and Ordinances are published in the Legal Supplement to the number of the *Government Gazette* :—

The Road Traffic Ordinance, 1962.
(Government Notice No. 41 of 1963)

The Central Housing Authority (Execution of Documents and Instruments) (Amendment) Rules, 19
(Government Notice No. 42 of 1963)

The Civil Establishment (General) (Amendment No. 51) Order, 1963.
(Government Notice No. 43 of 1963)

The Telephone Tariff Regulations, 1963.
(Government Notice No. 44 of 1963)

The Ministry of Finance (Integration) Ordinance, 1963.
(Ordinance No 17 of 1963)

The Ministry of Agriculture and Natural Resources (Integration) Ordinance, 1963.
(Ordinance No. 18 of 1963)

The Development (General Purposes) Loan Ordinance, 1963.
(Ordinance No. 19 of 1963)

The Investment in Mauritius Government Securities Ordinance, 1963.
(Ordinance No. 20 of 1963)

The Road Traffic (Amendment) Ordinance, 1963.
(Ordinance No. 21 of 1963)

The Telfair Street (Modification) Ordinance, 1963.
(Ordinance No. 22 of 1963)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
29th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 681 of 1963. (M.P. 232

NEW JERUSALEM CHURCH SOCIETY FOR 196

In accordance with section 5 of the New Jerusalem Church Society Ordinance, (Cap. 375) His Excellency the Governor has been pleased to approve the election of Mrs. Y. Walter as Vice-President of the New Jerusalem Church Society for the rest of the year in the place of Mr. Lucien de Chazal, resigned.

Chief Secretary's Office,
Port Louis,
25th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 682 of 1963. (E/406/2/01

APPOINTMENT OF ADDITIONAL CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to approve the appointment of Mr. Joseph Marden, Post Officer Grade II, as Additional Civil Status Officer, Quartier Militaire with effect from the 1st July, 1963.

General Notice No. 683 of 1963. (E/406/2/01)

APPOINTMENT OF CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to approve the appointment of Miss Chan Shiou Ti Chan Tung as Civil Status Officer of Port Louis with effect from the 1st July, 1963. General Notice No. 568 of 1963, concerning the appointment of Miss Cathaye Mootoosamy as Civil Status Officer, is hereby cancelled.

Chief Secretary Office,
Port Louis,
25th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 684 of 1963. (M.P. 2497/1)

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. Shunmoogum Mootoosamy, a District Magistrate for Mauritius and its Dependencies.

This assignment is in addition to the assignment made to him by the Honourable the Chief Justice of each and every district of the Colony.

Chief Secretary's Office,
Port Louis,
26th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 685 of 1963. (M.P. 1836/14)

TURKISH CONSULAR REPRESENTATION

With reference to General Notice No. 929 of 1961, His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that Mr. Fikret Berker has been appointed as Consul-General of Turkey in London, with jurisdiction in all British Colonies and Protectorates, in succession to Mr. Ismael Soysal.

Mr. Fikret Berker is accordingly granted provisional recognition in his consular capacity pending the issue of Her Majesty's Exequatur.

Chief Secretary's Office.
Port Louis,
27th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 686 of 1963. (M.H.S. 36)

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 2 of 1962 shortly entitled :

MOKA—FLACQ

His Excellency the Governor having issued
for the election of three Members of the
Council for the electoral district of Moka—
Returning Officer for the said electoral distri
the eighteenth day of July, 1953, now nex
between the hours of 9 a.m. and 3 p.m. at th
de Flacq Government School, proceed
nomination, and if there is no opposition
election of three Members for the said electora

Every nomination paper must be signed by
more registered electors of the electoral d
Moka-Flacq and be delivered to the Returnin
between the said hours of 9 a.m. and 3 p.m.

Every nomination paper shall specify the
address, and occupation of the candidate.

No nomination paper shall be valid or acted
the Returning Officer unless it is accompanied by

(*a*) a declaration in the form set out in the
Schedule to the Legislative Council Ordi
1948;

(*b*) a deposit of two hundred and fifty rupees in

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secretary

General Notice No. 501 of 1953. (M.P. 15282/

THE LEGISLATIVE COUNCIL ORDINANCE, 19

NOTICE OF ELECTION OF THREE MEMBERS OF THE LEGISLATIVE COUNCIL FOR THE ELECTORAL DISTRICT OF GRAND PORT—SAVANE

His Excellency the Governor having issued His Wr
for the election of three Members of the Legislati
Council for the electoral district of Grand Port—Savan
the Returning Officer for the said electoral district w
on the eighteenth day of July, 1953, now next ensuin
between the hours of 9 a.m and 3 p.m. at the Ro
Belle Government School proceed to the nominatio
and if there is no opposition, to the election of thr
Members for the said electoral district.

Every nomination paper must be signed by any six
more registered electors of the electoral district of Gra
Port—Savane and be delivered to the Returning Offi
between the said hours of 9 a.m. and 3 p.m.

Every nomination paper shall specify the n
address, and occupation of the candidate.

No nomination paper shall be valid or acted upon
the Returning Officer unless it is accompanied by :—

(*a*) a declaration in the form set out in the Sec
Schedule to the Legislative Council Ordina
1948;

(*b*) a depost of two hundred and fifty rupees in c

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secretar

PAMPLEMOUSSES—RIVIÈRE DU REMPART

...ncy the Governor having issued His Writ
...ction of three Members of the Legislative
... the electoral district of Pamplemousses—
... Rempart, the Returning Officer for the said
...istrict will on the eighteenth day of July, 1953,
... ensuing, between the hours of 9 a.m. and
... the District Court of Mapou, proceed to the
...ion, and if there is no opposition, to the election
... Members for the said electoral district.

... nomination paper must be signed by any six
... registered electors of the electoral district of
...mousses—Rivière du Rempart and be delivered
... Returning Officer between the said hours of 9 a.m.
... p.m.

... nomination paper shall specify the name,
...ss and occupation of the candidate.

... nomination paper shall be valid or acted upon by
... Returning Officer unless it is accompanied by :—

(*a*) a declaration in the form set out in the Second Schedule to the Legislative Council Ordinance, 1948;

(*b*) a deposit of two hundred and fifty rupees in cash.

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 503 of 1953. (M.P. 10993/6)

CHANGES IN THE MAGISTRACIES

With reference to General Notice No. 1043 of 1952, His Excellency the Governor has been pleased to approve of the following changes in the Magistracies :—

The appointment of Mr. G. Bouloux, Magistrate for Mauritius and the Dependencies, to act as Magistrate of the Industrial Court with jurisdiction over the whole island of Mauritius, to lapse with effect from the date of departure of the 'Sir Jules' for the Chagos Islands.

Mr. G. Bouloux, Magistrate for Mauritius and the Dependencies, is assigned the Lesser Dependencies with effect from the date of departure of the 'Sir Jules' for the Chagos Islands.

The Secretariat, Mauritius,
4th July, 1953.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 504 of 1953. (M.P. 10993/6)

THE INDUSTRIAL COURTS ORDINANCE

(*Cap. 183*)

It is hereby notified that His Excellency the Governor, in exercise of the powers conferred upon him by section 4 of the Industrial Courts Ordinance, has appointed Mr. G. Desmarais, Magistrate for Mauritius and the Dependencies, in addition to his duties as Magistrate for Mauritius and the Dependencies, to act as Magistrate of the Industrial Court, with jurisdiction over the whole island of Mauritius, with effect from the date of departure of the "Sir Jules" for the Chagos Islands.

The Secretariat, Mauritius,
4th July, 1953.

J. D. HARFORD,
Colonial Secretary.

ARRIVAL AND ASSUMPTION OF DUTY

MRS. MARJORIE EDNA COATES, Education Officer, Education Department, arrived on 28th August, 1957, and assumed duty on 2nd September, 1957, on contract.

General Notice No. 745 of 1957.

APPOINTMENT

LUC MARCEL FIJAC, Assistant Establishment Officer, Secretariat, to act as Establishment Officer, with effect from the 15th September, 1957.

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 838 of 1957. (M.P. 6168/13)

OPENING OF ADDITIONAL CIVIL STATUS OFFICES

Notice is hereby given that His Excellency the Governor has, in exercise of the powers vested in him under section 6 (3) of the Civil Status Ordinance—Cap 39, Laws of Mauritius—approved the establishment of two Civil Status Offices, one at Beau Bassin and one at Vacoas (La Caverne) respectively.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 839 of 1957. (M.P. 16672/1)

MAGISTRATE FOR LESSER DEPENDENCIES

His Excellency the Governor has been pleased to appoint Mr. L. Paul Toureau, Civil Commissioner, to act as Magistrate for Mauritius and the Dependencies, with the assignment of the Lesser Dependencies, for the purpose of visiting the Chagos Islands, with effect from the date of departure of the *M.V. Sir Jules* for Agalega on or about the 23rd October, 1957.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 840 of 1957. (E/406/2/01/408

APPOINTMENT OF CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to appoint Mr. Basheeray Yoosoofkhan Moortoozakhan, Temporary Clerk, Registrar General's Department, as Civil Status Officer, Central Civil Status Office, with effect from the 15th October, 1957.

Colonial Secretary's Office,
Port Louis.
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 841 of 1957.

LEGAL SUPPLEMENT

The undermentioned Government Notice is published in the Legal Supplement to this number of the *Government Gazette* :—

The Bread (Control of Manufacture and Sale) (Amendment) Order, 1957.
(Government Notice No. 61 of 1957)

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 842 of 1957.

SPECIAL LEGAL SUPPLEMENT

The undermentioned Bills are published for general information in the Special Legal Supplement to this number of the *Government Gazette* :—

A Bill "To establish "La Clinique Mauricienne" and to provide for the incorporation and management thereof".

A Bill "To provide for the incorporation and management to the Mauritius Bar Association and matters incidental thereto".

A Bill "To amend the Trade Marks Ordinance".

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

3rd and last publication

General Notice No. 843 of 1957.

THE MAURITIUS LEGISLATIVE COUNCIL

Notice of Private Bill proposed for introduction into the Legislative Council

WHEREAS it is provided under Standing Order 3 of the Standing Orders and Rules of the Legislative Council that when any Private Bill shall be proposed which may directly affect the private rights or property of any person or company, notice shall be given to the parties concerned of the general nature and object of such Bill by advertisement in the *Government Gazette* to be published one month before the *first* reading of such Bill ;

AND WHEREAS it is further provided that such advertisement shall be inserted *three times* at the least in the *Government Gazette* before such first reading ;

AND WHEREAS a petition has been presented by Messrs. M. de Spéville, Q.C., L. E. Venchard, G. Duval, J. R. Hein, J. R. Hein, Q.C., C. K. L. Yip Tong, A. Jugnauth, C. Lamalétie, C. de Labauve d'Arifat, R. Drubigny de Broglio, R. d'Unienville, A. M. Ahmed, H. E. Walter, M. Gujadhur, R. Montocchio, R. Jomadar, R. Boodhoo, S. Bhuckory, E. Madhoo, J. Bedaysee, R. Sewgobind, L. Pillay, A. Osman, E. Bussier and H. Nahaboo, Barristers-at-law, practising before the Courts of the Colony, for the purpose set out in the Schedule hereto ;

THIS IS therefore to give notice for the *third time* to all parties which may be concerned that a Bill entitled "To provide for the incorporation and management of the Mauritius Bar Association and matters incidental thereto" is proposed for introduction into the Legislative Council and that the general nature and object of such Bill are set out in the Schedule hereto.

Council Office,
Port Louis,
1st October, 1957.

L. REX MOUTOU,
Clerk, Legislative Council.

SCHEDULE

The Bill referred to above aims at providing for the incorporation and management of an association styled "Mauritius Bar Association" for the following purposes namely, the safeguard, maintenance and promotion of the interests of the Mauritius Bar, the upholding of the honour, dignity, reputation and independence of the members thereof and the furtherance of their interests in connection with the practice of their profession.

General Notice No. 8

TENDER

GOVERN

Tenders on the appr
the value of Rs 1.50 wi
the Treasury on Wed
30 p.m., for the erect
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Hospital, Cando
(b) One G.M.O.'s Qu
(c) One house for G
(d) A group of bu
Agriculture at R
together with all

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5. Government does
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ection of any tender.

he Treasury, Port Lou
10th October, 1957.

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neral Notice No. 845

CRIMINAL

Notice is hereby give
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pendencies will hold
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stice may direct, on a
First Session on and
1958.
Second Session on an
1958.
Third Session on and f
Fourth Session on and
1958.

9th October, 1957.

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neral Notice No. 846

NOTICE UNDER S
COMPANI

CANCELLATION OF RE

Notice is hereby given
re been struck off the
The Mauritius Stone I
Pierrefonds Ltd.

Dated at Port Louis, 1
October, one thousand

... the 4th February, 1963.

ARRIVAL AND RESUMPTION OF DUTY

(M.L./P.F. 207)

GOINSAMY RAMASAWMY, Principal Assistant Secretary, returned from official business on the 4th February and resumed duty on the 5th February, 1963.

REVERSION TO SUBSTANTIVE APPOINTMENT

(ML/PF 212)

ABDOOL AHUD HOSSENBUX, Assistant Secretary, 5th February, 1963.

DEPARTURE

(P.F. 25466)

KENNETH CAULFIELD PEARSON, Establishment Secretary, 9th February, 1963, on leave.

By direction of His Excellency the Governor.

hief Secretary's Office,
Port Louis,
13th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 145 of 1963.

SPECIAL LEGAL SUPPLEMENT

The undermentioned Bills are published for general information in the Special Legal Supplement to this number of the *Government Gazette* :—

A Bill "The Pensions (Amendment) Bill".

A Bill "The Civil Code (Amendment) Bill".

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
16th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 146 of 1963.

NON DISALLOWANCE OF ORDINANCES

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinances of the Legislature of Mauritius :—

(M.P. 4799/4)

Ordinance No. 23 of 1962 shortly entitled :
"The Renganaden Seeneevassen Memorial Foundation (Incorporation) Ordinance, 1962".

(F/REV/1423/1)

Ordinance No. 17 of 1962 shortly entitled :
"The Customs Tariff (Amendment) Ordinance, 1962".

(M.P. 1646/16)

Ordinance No. 25 of 1962 shortly entitled :
'The Phœnix Military Cemetery (Repeal) Ordinance, 1962".

ef Secretary's Office
'ort Louis,
1 February, 1963.

TOM VICKERS,
Chief Secretary.

In exercise of the powers conferred upon him by Section 5 (1) of the Representation of the People Ordinance 1958, His Excellency the Governor has been pleased to appoint :

(1) Mr. F. R. Mosses to be Assistant Registration Officer with effect from the 3rd January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 34—Belle Rose
No. 35—Quatre Bornes
No. 36—Stanley
No. 37—Rose Hill
No. 39—Beau Bassin
No. 40—Petite Rivière
in replacement of Mr. C. Paul ;

(2) Mr. C. Joachim to be Assistant Registration Officer with effect from the 3rd January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 11—Grand'Baie
No. 12—Poudre d'Or
No. 13—Piton
No. 14—Rivière du Rempart
in replacement of Mr. R. M. Hurdowar

(3) Mr. I. Mamoojee to be Assistant Registration Officer with effect from the 9th January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 27—Black River
No. 40—Petite Rivière
in replacement of Mr. E. Appadou.

Chief Secretary's Office,
Port Louis,
11th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 148 of 1963.

TERMINATION OF APPOINTMENT OF ADDITIONAL CIVIL STATUS OFFICER

His Excellency the Governor has approved the termination of appointment of Mr. Indraparsad Lollchand as Additional Civil Status Officer for Grand Gaube, with effect from the 18th January, 1963.

Chief Secretary's Office,
Port Louis,
15th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 149 of 1963. (M.P. 16672/1)

MAGISTRATE FOR LESSER DEPENDENCIES

(Courts Ordinance (Cap. 168) as subsequently amended)

His Excellency the Governor, with the concurrence of the Chief Justice, has been pleased to appoint Mr. Barrister Régis Bourdet, to act as Magistrate for Mauritius and the Dependencies, with the assignment of the Lesser Dependencies, for the purpose of visiting the Chagos Archipelago, with effect from the date of the departure of the M. V. "Mauritius" for the Chagos Archipelago on or about the 16th February.

Chief Secretary's Office,
Port Louis,
8th February, 1963.

TOM VICKERS,
Chief Secretary.

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 40 of 1963 shortly entitled :

"The Tobacco Board Employees' Provident Fund Ordinance, 1950, (Repeal) Ordinance, 1963",

Chief Secretary's Office,
Port Louis,
25th March, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 271 of 1964.

MAGISTRATE FOR THE LESSER DEPENDENCIES

(Courts Ordinance (Cap. 168) as subsequently amended)

His Excellency the Governor, with the concurrence of the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. R. Lallah, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting Chagos, with effect from the date of the departure of the M.V. Mauritius on or about the 4th April, 1964.

Chief Secretary's Office,
Port Louis,
20th March, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 272 of 1964.

BANKING STATISTICS

NUMBER OF REPORTING BANKS : 4

Figures as at 31st December, 1963

(All figures are in rupees (000 omitted))

LIABILITIES	Rs	ASSETS	
1. Notes in circulation ...	—	1. Cash	
2. Deposits :		2. Balances due by other banks in the Colony ...	
(i) Demand ...	174,717	3. Balances due from banks abroad	
(ii) Time ...	10,722	4. Loans and advances :	
(iii) Savings ...	20,641	(i) Primary production (including processing of primary products) ...	
3. Balances due to :		(ii) Other industries (including Commerce, Transport and Distribution) ...	
(i) Other banks in the Colony	4,290	(iii) Other advances ...	
(ii) Banks abroad ...	5,220	5. Investments :	
4. Other Liabilities ...	66,276	(i) Local ...	
		(ii) Other ...	
		6. Other Assets :	
		(i) Bills discounted ...	
		(ii) Bills receivable ...	
		(iii) Other	
Total Liabilities ...	281,866	Total Assets ..	

MAURITIUS GOVERNMENT SERVIC

VACANCIES FOR TEMPORARY METEOROLOGICAL TANTS (MALE) IN THE METEOROLOGICAL DEPAR

Salary : Rs 2,748 per annum
Age Limit : Between 18 and 35 years
Closing date : 14th April, 1964
Qualifications :

Cambridge School Certificate with credit in matics and one science subject or an acc alternative qualification.

For application forms and other details, apply in to the Establishment Division of the Chief Sec Office.

No consideration will be given to applications made on the prescribed forms, which should be sup by the required certificates. Applications and anr should be forwarded to the Secretary, Public S Commission, 10, de Caën Street, Rose Hill.

Establishment Division,
Chief Secretary's Offic
18th March, 1964.
Port L

2nd and last publi

General Notice No. 274 of 1964.

NOTICE IN TERMS OF SECTION 5 OF LAND ACQUISITION ORDINANCE No. 1952

Notice is hereby given that the portions of described hereinafter have been acquired by G ment for a public purpose, to wit :— The Construct Schools.

DESCRIPTIONS

Portion No. 1 of an extent of one arpent, Cc Measure, forms part of a property admeasuring 1 approximately belonging to Mon Désert Alma Lt terms of title deed transcribed in Vol. 510 No. 2 situated at Verdun in the District of Moka a bounded as follows :—

Towards the North by an Estate Road on hundred and ten and a half feet or 92.50 met Towards the East by the surplus of the proper Mon Désert Alma Ltd. on one hundred and five feet or 50.29 metres.
Towards the South by the Sinuosities of a drain Towards the West by Verdun Road on one hur and fifty five feet or 47.24 metres.

Portion No. 2 of an extent of one arpent, Co. Measure, forms part of a property admeasuring 1 approximately belonging to the Anglo Ceylon General Estates Co. Ltd. in terms of title deed t cribed in Vol. 185 No. 351 is situated at Britannia the Labourers' Camp) in the District of Savanne a bounded as follows :—

Towards the North East partly by the surplus o property of Anglo Ceylon and General Estate Ltd. on fifty and three fourths feet or 15.46 m and partly by an Estate Road on ninety one one-fourth feet or 27.80 metres.
Towards the South East by the surplus of property of Anglo Ceylon and General Estates Ltd. on three hundred and fifteen and one-fc feet or 96.08 metres.
Towards the South West by an Estate Road on hundred and forty two feet or 43.28 metres.
Towards the North West by the surplus of property of Anglo Ceylon and General Estates Ltd. on three hundred and seven and a half fe

number of the Government Gazette :—

A Bill "Further to amend the Trade Marks Ordinance".

A Bill "To amend the Crown Lands Ordinance".

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
2nd May, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 446 of 1964.

LEGAL SUPPLEMENT

The undermentioned Government Notice and Ordinances are published in the Legal Supplement to this number of the *Government Gazette* :—

The Valuation Lists Regulations, 1964.
(Government Notice No. 44 of 1964)

The Customs (Amendment) Ordinance, 1964.
(Ordinance No. 5 of 1964)

The Hire-Purchase (Credit Sales) Ordinance, 1964.
(Ordinance No. 6 of 1964)

The Mauritius Broadcasting Corporation Ordinance, 1964.
(Ordinance No 7 of 1964)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
2nd May, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 447 of 1964.

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. A. G. M. Ahmed, a District Magistrate for Mauritius and its Dependencies.

This assignment is in addition to the assignment made to him by the Honourable the Chief Justice of each and every district of the Colony.

Chief Secretary's Office,
Port Louis,
28th April, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 448 of 1964.

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 32 of 1963 shortly entitled :

"The Central Electricity Board Ordinance, 1963".

Chief Secretary's Office,
Port Louis,
27th April, 1964.

TOM VICKERS,
Chief Secretary.

Salary Scale : Rs 2,748 to Rs 5,0
Age Limit : between 18 and officers over 35 apply.
Closing Date : 18th May, 1964.

Qualifications :—

Either : Cambridge School Ce pass in English Langu Mathematics ;

Or : London General Certific in five subjects at Ordin one and the same sitting Language, French and

Or : An acceptable alternative c

For application forms and other deta to the Establishment Division of the Office.

No consideration will be given to a made on the prescribed forms, which sh by the required certificates. Applicati should be forwarded to the Secretar Commission, 10, de Caën Street, Rose

Establishmen
Chief Secre

22nd April, 1964.

General Notice No. 450 of 1964.

NOTICE

ASSIGNMENT OF DISTRICTS TO M

The Honourable the Chief Justice following changes in the assignments c trict Magistrates with effect from the 21

1. The special charge of the 1st Divis Court of Port Louis to L. E. Ve District Magistrate, lapses ;
2. C. de Labauve d'Arifat, Esquire, D is given the special charge of the 1 District Court of Port Louis and h of the District Court of Plaines Wi Division, lapses as from the same
3. Y. P. Espitalier-Noël, Esquire, Dist given the special charge of the I Plaines Wilhems, Rose Hill Div charge of the IInd Division of the Port Louis, lapses as from the sam
4. A. M. G. Ahmed, Esquire, Distri given the special charge of the IIn District Court of Port Louis, his the District of Pamplemousses la same date.
5. C. Nazroo, Esquire, District Magist special charge of both the Distric Rempart and Pamplemousses.

FRANCE
Master ar

24th April, 1964.

ets to announce the death, on the 54, of Mrs. Marie Olga Jasmin, Teacher mary Schools, Ministry of Education rs.

Office,

A. S. ALLAN,
4. *Acting Chief Secretary.*

No. 1007 of 1964.

APPOINTMENTS

URICE RAULT, Magistrate, Intermediate , to act as Presiding Magistrate, with 26th October, 1964.

RALALL, Administrative Assistant, to be tary, with effect from the 26th October,

GÉRARD LALOUETTE, Puisne Judge, r Puisne Judge, with effect from the 964.

PHUL, Magistrate, Intermediate Criminal Puisne Judge, with effect from the 964.

ND RESUMPTION OF DUTY

HEN MOOTOOSAMY, Superintendent of ctober, 1964, from leave and resumed h October, 1964.

puty Director of Agriculture, 19th Oc- m leave and resumed duty on the 964.

IONS TO SUBSTANTIVE APPOINTMENTS

AVY, Assistant Superintendent of Pri- ber, 1964.

L, Assistant Superintendent of Prisons, 964.

E PREFUMO, Chief Officer, Prisons School, 20th October, 1964.

His Excellency the Officer Administment.

Office,

A. S. ALLAN,
4. *Acting Chief Secretary.*

No. 1008 of 1964.

L LEGAL SUPPLEMENT

ioned Bill is published for general e Special Legal Supplement to this *ernment Gazette*:—

r to amend the Co-operative Societies 45".

His Excellency the Officer Administment.

ffice,

A. S. ALLAN,
Acting Chief Secretary.

The Interpretation and General Clauses Ordinance, 1957.

(Government Notice No. 146 of 1964)

The Town Council of Vacoas—Phoenix (General Rate) (Amendment) Regulations, 1964.

(Government Notice No. 147 of 1964)

The Customs Tariff (Amendment No. 2) Ordinance, 1964.

(Ordinance No. 28 of 1964)

The Public Holidays (Amendment) Ordinance, 1964.

(Ordinance No. 29 of 1964)

The Explosives (Amendment) Ordinance, 1964.

(Ordinance No 30 of 1964)

The Labour Clauses in Public Contracts Ordinance, 1964.

(Ordinance No. 31 of 1964)

The Ministry of Social Security (Integration) Ordinance, 1964.

(Ordinance No. 32 of 1964)

The Old Age Pensions (Amendment) Ordinance, 1964.

(Ordinance No. 33 of 1964)

The Sugar Industry Reserve Funds (Amendment) Ordinance, 1964.

(Ordinance No. 34 of 1964)

The Ministry of Information, Posts and Telegraphs, and Telecommunications (Integration) Ordinance, 1964.

(Ordinance No. 35 of 1964)

By direction of His Excellency the Officer Administering the Government.

Chief Secretary's Office,
Port Louis,
31st October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

General Notice No. 1010 of 1964.

DECLARATION OF POST VACANT

His Excellency the Officer Administering the Government has declared vacant the post of Teacher, Government Schools, Ministry of Education, held by Miss Marie Lise Ramasamy who failed to return to Mauritius to resume duty on the expiry on the 17th March, 1964, of approved leave spent in Britain.

Chief Secretary's Office,
Port Louis,
26th October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

General Notice No. 1011 of 1964.

MAGISTRATE FOR LESSER DEPENDENCIES

(The Courts Ordinance (Cap. 168) as subsequently amended)

His Excellency the Officer Administering the Government, with the concurrence of the Honourable the Chief Justice, has been pleased to approve the following assignments :—

(1) The Lesser Dependencies to Mr. N. A. Abbasakoor, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting the Chagos Archipelago with effect from the date of departure of M. V. "Mauritius" on or about the 18th November, 1964, and

(2) The Lesser Dependencies to Mr. S. J. Forget, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting St. Brandon with effect from the departure of "La Perle II" on or about the middle of November, 1964.

Chief Secretary's Office,
Port Louis,
29th October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

NISTRY OF EDUCATION

alary scale : Rs 10,080 t
ge Limit : under 45 serving of
losing date : 10th Decen
ualifications : A suitable regard to together v education rience.
to a Hon Hindi to Philosoph subjects, degrees Philosoph also be co

For application forms and the Establishment Divisi ffice.

Candidates in the United e Mauritius Students' Unit, ndon, W.1.

No consideration will be de on the prescribed pported by the required d annexures should be f blic Service Commissic Rose Hill.

Est

2nd October, 1964.

General Notice No. 1013 of

MAURITIUS GOVEI

ACANCIES FOR ASSISTANT S THE GENERAL STOI

Salary Scale : Rs 2,904
Age Limit : between
Closing date : 25th No

Qualifications :—

Either : A Cambridge Sc in at least five Language or I Elementary M subjects.

Or : A London Gene with passes at C same examinati English Literat and two other s

Or : An acceptable al

For application forms a person to the Establishme Secretary's Office.

No consideration will be made on the prescribed form by the required certificates. should be forwarded to th Commission, 10, de Caen S

E

26th October, 1964.

General Notice No. 405 of 1965.

LEGAL SUPPLEMENT

The undermentioned Government Notices and Ordinance are published in the Legal Supplement to this number of the *Government Gazette* :—

Nationality and Passport Matters arising out of the Independence of The Gambia.
(Government Notice No. 22 of 1965)

The Wages Council (Printing Industry) Order, 1965.
(Government Notice No. 23 of 1965)

The Breweries (Amendment) Ordinance, 1965.
(Ordinance No. 2 of 1965)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
30th April, 1965.

TOM VICKERS,
Chief Secretary.

General Notice No. 406 of 1965.

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. R. Lallah, a District Magistrate for Mauritius and its Dependencies, as from the 19th April, 1965. This assignment is in addition to previous assignments made to him.

2. The assignment of the Lesser Dependencies to Mr. A. G. M. Ahmed published in General Notice No. 44, of 1964 lapses from the same date.

Chief Secretary's Office,
Port Louis,
23rd April, 1965.

TOM VICKERS,
Chief Secretary.

General Notice No. 407 of 1965.

MAURITIUS GOVERNMENT SERVICE

VACANCIES FOR TECHNICAL INSTRUCTORS TO TEACH:—
(a) METALWORK AND MACHINE WORKSHOP
(b) WOODWORK
AT THE JOHN KENNEDY COLLEGE IN THE MINISTRY OF EDUCATION AND CULTURAL AFFAIRS.

Salary Scale : Rs 9,000 to Rs 16,320.
Age Limit : Under 35 years—serving officers over 35 years of age may apply.
Closing Date : 4th June, 1965.

Qualifications :—

For the teaching of Metalwork and Machine Workshop

A full Technological City and Guilds Certificate in Machine Shop Engineering or equivalent qualifications. Candidates must have served an apprenticeship to the trade and have good experience subsequently in fitting and machine work. Previous teaching experience is desirable.

For the teaching of Woodwork

A full Technological City and Guilds Certificate in Carpentry and Joinery or equivalent qualifications. Candidates must have served an apprenticeship to the trade and must have good experience subsequently in this work. Previous teaching experience

For application forms and ot person to the Establishment D Secretary's Office.

Candidates in the United Kingd Mauritius Students' Unit, 16, U London, W. 1.

No consideration will be given made on the prescribed forms, whi by the required certificates. Appli should be forwarded to the Seci Commission, 7, Louis Pasteur Stre

Establish
Chief

23rd April, 1965.

General Notice No. 408 of 1965.

MAURITIUS GOVERNMI

VACANCIES IN THE DEPARTMEN

Applications are invited for the Department of Agriculture :—

(1) Four Stock Inspectors
(2) Five Assistant Agricultural C
(3) One Scientific Assistant (D Services)
(4) Four Agricultural Cadets

Salary Scales :—

(a) For Stock Inspector, Assista and Scientific Assistant — Rs
(b) (i) For Cadet possessing F College of Agriculture — Rs 3
(ii) For Cadet possessing Hon College of Agriculture — Rs 3.
(iii) For Cadet possessing a U addition to Pass Diploma or the College of Agriculture — I

Age Limit :—

(a) For posts of Stock Inspector, Officer and Scientific Assistar 35 years — serving officers o may apply.

(b) For posts of Cadet — betwee serving officers over 26 years o

Closing Date :—

20th May, 1965.

Qualifications :—

(a) For posts of Stock Inspector, Officer and Scientific Assista Diploma of the College of A

(b) For posts of Cadet :—
Pass Diploma of the Colle an acceptable alternative preference to candidates Honours or Pass Diplom Agriculture, possess a degr in the United Kingdom or Second preference to cand not holders of a Universit Honours Diploma of the C

For application forms and other d to the Establishment Division of t Office.