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MEETING

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CONTENTS

Chairman: Prince WAN WAITHAYAKON (Thailand).

Information from Non-Self-Governing Territories (*continued*)

[Item 34]*

1. Mr. RYCKMANS (Belgium) recalled that at the 189th meeting some doubts had been expressed concerning the information submitted by his government as regards the educational situation in the Belgian Congo; it had been stated, in particular, that some 19,000 schools in that territory had each only a single teacher. Mr. Ryckmans wished to state that according to information he had received from the Office of Education of the United States Government, 44 per cent of the schools in the United States had only one teacher.

2. The CHAIRMAN invited the Committee to resume consideration of the Cuban draft resolution on visits to Non-Self-Governing Territories (A/C.4/L.113).

3. Mr. PEREZ CISNEROS (Cuba) observed that after hearing the statement of the representative of Denmark at the 189th meeting, he felt that the question deserved further study. He requested that the full text of the Danish statement should be circulated as a Fourth Committee document.

4. The Cuban delegation did not fully understand the objections raised to its proposal by the representative of Denmark. Nothing in the proposal conflicted with the desire of the Danish delegation that invitations by the administering Powers to the Secretariat to visit Non-Self-Governing Territories should be extended spontaneously. Mr. Pérez Cisneros could not understand, moreover, why the report on the Secretariat's visit to Greenland—a visit made by Secretariat officials whose functions related solely to Non-Self-Governing Territories—should not be brought to the attention of the General Assembly and the other administering Powers. Nevertheless, the Cuban delegation did not wish to press for a decision on a question which was likely to raise difficulties and which would unduly prolong the Fourth Committee's debates.

5. The Cuban delegation would therefore withdraw its draft resolution. It would, however, urge that the Fourth Committee should include in its report a statement to the effect that it had been informed of the invitation of the Government of Denmark and of the Secretariat's visit to Greenland, and that certain members of the Committee, while of the opinion that the Secretariat's report on that visit should be made available, had not insisted on the adoption of a specific resolution on the matter, owing to the pressure of the General Assembly's work.

6. The representative of Cuba reserved his right to reopen the question of such visits the following year.

7. The CHAIRMAN thanked the representative of Cuba for the co-operative attitude adopted by his delegation, and confirmed that the text of the Danish representative's statement would be distributed to the members of the Committee,[1] and that the Rapporteur's report would include a statement as suggested by the Cuban delegation.

8. Mr. LANNUNG (Denmark), referring to the statement made by the representative of Cuba, said he had nothing to add to his previous statement, which he thought spoke for itself. He appreciated the Cuban representative's suggestion that the statement should be issued as a document; in that way members would have the opportunity of reading it. He thanked the representative of Cuba for his action in withdrawing the draft resolution, as he thought that that would best serve the objectives which all members of the Committee had in mind.

* Indicates the item number on the General Assembly agenda.

[1] The Danish representative's statement was subsequently circulated as document A/C.4/L.127.

9. The CHAIRMAN then invited the Committee to consider the Indian draft resolution on the development of self-government in Non-Self-Governing Territories (A/C.4/L.115).

10. Mr. S. RAO (India) observed that the General Assembly had already had the privilege of welcoming to full membership of the United Nations one former Non-Self-Governing Territory, namely, the Republic of Indonesia. The Indian delegation, however, considered it appropriate that the action of the Netherlands Government, in pursuance of resolution 222 (III) of the General Assembly, should be formally recognized. The communication of 29 June 1950 from the Government of the Netherlands (A/1302/Rev.1), referred to in the second paragraph of the preamble of his draft resolution, also stated that in all probability no further reports would be submitted on the Netherlands West Indies and Surinam after 1950, since both those territories would then have acquired autonomous status and a full measure of self-government, but that in such an event the Netherlands Government would present a report to the General Assembly in accordance with resolution 222 (III), paragraph 2, relating to transfer of sovereignty.

11. The representative of India pointed out that paragraph 2 of the operative part of his draft resolution constituted an endorsement of the principle set forth in General Assembly resolution 222 (III), paragraph 2. He expressed the hope that in the future other Non-Self-Governing Territories, having passed through the period of probation envisaged in the Charter, would eventually become eligible for full membership of the United Nations.

12. Mr. SPITZ (Netherlands) associated himself whole-heartedly with the Indian draft resolution.

13. Mr. COOK (United Kingdom) had welcomed the admission of the Republic of Indonesia to membership of the United Nations, and accordingly approved the cessation of submission of information by the Netherlands regarding that country. His delegation would, however, abstain in a vote on the draft resolution as a whole, since the Government of the United Kingdom, while prepared to transmit information in accordance with resolution 222 (III), could not agree to the discussion of such information by the Special Committee or the General Assembly. He could not, therefore, support paragraph 2 of the operative part of the draft resolution, although he could endorse the remainder of the text.

14. Mr. TAJIBAEV (Union of Soviet Socialist Republics) said that his delegation also welcomed the entry of Indonesia into the family of equal and sovereign States. Nevertheless, since the status of Netherlands New Guinea and its relationship to Indonesia was not clear to his delegation, he would abstain in the vote.

15. The CHAIRMAN put to the vote the preamble and paragraph 1 of the operative part of the Indian draft resolution (A/C.4/L.115).

The preamble and paragraph 1 of the operative part were approved by 35 votes to none, with 5 abstentions.

16. The CHAIRMAN then put to the vote paragraph 2 of the operative part.

Paragraph 2 of the operative part was approved by 29 votes to none, with 13 abstentions.

17. The CHAIRMAN put to the vote the draft resolution as a whole.

The draft resolution as a whole was approved by 30 votes to none, with 12 abstentions.

18. Mr. TAJIBNAPIS (Indonesia) expressed his delegation's gratitude to the Indian delegation for its initiative in presenting the draft resolution, and to the Fourth Committee for approving it.

Question of South West Africa: advisory opinion of the International Court of Justice

[Item 35]*

19. Mr. FOURIE (Union of South Africa) explained that the members of his delegation who were to speak on the question of South West Africa were unavoidably engaged elsewhere, and requested postponement of consideration of the question until the following meeting.

20. Mr. V. RAO (Brazil) pointed out that such a postponement would entail loss of time for the Committee, which still had a great deal of work before it. He himself was prepared to speak at the current meeting on the joint draft resolution of Brazil, Cuba, Mexico and Uruguay (A/C.4/L.116 and A/C.4/L.116/Corr.1), and since the text of his remarks was ready for distribution and could be communicated to the absent members of the South African delegation, he thought it unnecessary to postpone the commencement of the debate.

21. Mr. PEREZ CISNEROS (Cuba) and Mr. DE MARCHENA (Dominican Republic) supported the view of the representative of Brazil.

22. The CHAIRMAN put to the vote the South African motion for adjournment.

The motion was rejected by 17 votes to 8, with 18 abstentions.

23. Mr. V. RAO (Brazil) summarized the circumstances leading up to the establishment of the mandate over South West Africa on the basis of the statement preceding the advisory opinion of the International Court of Justice (A/1362). Under the terms of that Mandate, the Union of South Africa had received full power of administration and legislation over the Territory of South West Africa as an integral portion of the Union. It could apply the laws of the Union to the territory subject to such local modifications as circumstances might require. On the other hand, the Union of South Africa had assumed international obligations of two kinds, the first of which were directly related to the administration of the territory and corresponded to the "sacred trust of civilization" referred to in Article 22 of the Covenant of the League of Nations. The second related to the machinery for implementation, and was closely linked to the supervision and control of the League. It corresponded to the "securities for the performance of this trust" referred to in Article 22. The nature of the obligations in the first category determined the nature of the administrative duties entrusted to the Union of South Africa.

24. Although the Mandate specified that South West Africa was to be administered "as an integral portion" of the Union of South Africa, that provision was merely intended to facilitate the task of administration and did not, according to the International Court of Justice, involve any cession of territory or transfer of sovereignty to the Union of South Africa. The same phrase was used in connexion with administrative unions under the International Trusteeship System, but, as the latest report of the Trusteeship Council (A/1306, p. 189) indicated, the Administering Authorities concerned did not interpret it as conferring sovereign rights over the territories concerned, but merely as an administrative convenience.

25. The Union of South Africa contended that the Mandate over South West Africa had lapsed because the League of Nations had ceased to exist. That was the origin of the dispute which had led to the request for an advisory opinion from the International Court of Justice.

26. It was true, as the Union of South Africa had asserted, that under the ordinary law of the majority of countries, a mandate lapsed with the disappearance of the mandator. But in taking action necessary to preserve or protect property or rights entrusted to his administration after the lapse of a mandate, a mandator was, under the same ordinary law, bound by the terms of the original mandate and by the legal responsibility involved in administering rights and property of third parties. Even if it was possible to regard the Mandate for South West Africa as a mandate under ordinary law, it followed that the obligations that State had assumed would not lapse as a result of the dissolution of the League of Nations, at least until a new legal situation had been created by the appointment of a successor to the extinct mandator competent either to modify or terminate the mandate. That new legal situation had in fact been created but, as the International Court of Justice had pointed out in its advisory opinion, the principles governing mandates under ordinary law were not applicable to mandates under international law.

27. According to the advisory opinion, the Mandate might be defined as an international institution, under which South West Africa had acquired an international status. That status, once established and recognized by the community of nations, could not be abolished by unilateral action on the part of the State entrusted with the administration of the territory. No conclusion could thus be drawn by analogy with ordinary law in view of the international nature of the Mandate entrusted to the Union of South Africa and because, as the International Court had recognized, the termination of the Mandate did not terminate the obligations of the Mandator.

28. On account of their universal character, legal principles were applicable both to private and public international law and to municipal law. They should not, however, be confused with the rules applicable to specific legal actions or institutions. The concept of the mandate in municipal law could not be transferred bodily to international, constitutional or administrative law. The mandate was a specific application of the general principle of representation, on which many legal institutions in international and municipal law were based. All those institutions were governed by their own specific rules which varied widely from one code of legislation to another. In considering an international mandate, therefore, it was not permissible to invoke the specific rules governing the mandate in ordinary law.

29. The concept of representation in international law was closer to that of the legal act of trust in the Anglo-American sense than to the concept of the mandate in ordinary law. By analogy, therefore, it was possible to accept Sir Arnold McNair's definition, given in his separate opinion (A/1362, p. 146-163), of the Mandate for South West Africa as a trust.

30. Sir Arnold McNair was quite correct in contending that the judicial supervision for which the Mandate made provision was expressly maintained by Article 37 of the Statute of the International Court of Justice. His opinion that the administrative supervision, for which the Mandate also made provision, had ceased to exist following the dissolution of the League of Nations and that the only remaining element of control over the exercise of the Mandate was the power of former Member States of the League to apply to the International Court of Justice was, however, open to question.

31. In establishing the mandates system as an international institution, the Member States of the League of Nations had accepted a "sacred trust of civilization" (Article 22 of the Covenant of the League) for the benefit of humanity. To regard that international obligation solely in the light of relations between the Mandatory Power and the former Member States of the League of Nations, considered individually, was to deprive the system of most of its international character. Moreover, the parties to the Mandate were, on the one hand, the League of Nations which had a legal personality of its own and which acted implicitly on behalf of the community of nations and, on the other, His Britannic Majesty, acting for the Government of the Union of South Africa. Instruments concluded by the League of Nations, though binding upon Member States, could not be applied as if they were separate treaties concluded with those States. The Mandate for South West Africa therefore imposed obligations upon the Union of South Africa towards the international community and not towards the Member States of the League of Nations in their individual capacity.

32. It was true that the United Nations had not automatically assumed the rights and duties of the League of Nations. But while the resolution adopted by the Assembly of the League on 18 April 1946[2] specifically stated that the League's functions with respect to mandated territories would come to an end, it did not say that the mandates themselves would come to an end. It recognized that Chapters XI, XII, XIII of the United Nations Charter embodied principles corresponding to those declared in Article 22 of the Covenant of the League and noted the expressed intentions of the Mandatory Powers to continue to observe their obligations under the mandates until they had concluded other arrangements with the United Nations.

33. Those conclusions had been accepted by the Union of South Africa, as its declaration in the Assembly of the League on 9 April 1946[3] and its statement in the

[2] See *League of Nations, Official Journal*, Special Supplement No. 194, p. 58.
[3] *Ibid.*, p. 33.

Fourth Committee of the General Assembly of the United Nations on 4 November 1946 indicated.[4] The International Court of Justice also drew attention to a letter of 23 July 1947[5] to the Secretary-General of the United Nations from the Legation of the Union of South Africa at Washington referring to a resolution of the Union Parliament, which stated that ". . . the Government should continue to render reports to the United Nations Organization as it has done heretofore under the Mandate".

34. Such statements had the implications and legal force of a ratification. It was a universal principle of law that the acceptance of obligations by an interested party rectified any deficiencies in the juridical acts from which such obligations were derived. The only argument which could be invoked against the effect of ratification—as a general legal principle and not in the specific sense of the implementation of commitments—was that of lack of competence. The powers of the signatories to the League of Nations resolution were, however, beyond question, as were those of the South African Parliament. The declarations made by the Union of South Africa had therefore re-established its obligations, which could not be annulled or modified by unilateral action on its part.

35. But the irrevocable nature of the rights and duties of the international community, which was now represented by the United Nations, and of the rights and duties of the Union of South Africa, was not merely due to that ratification. Rights acquired by the population of a territory which had received an international status could not be revoked; that principle had been supported by Sir Arnold McNair, one of the Judges of the International Court of Justice. It therefore followed that the dissolution of the League of Nations in no way affected the continuity of the international mandates system to which South West Africa was subject; furthermore, that system included administrative control. The word "mandate" should be understood as implying the whole of the international system with which it was connected. The obligations arising from the Mandate therefore covered all the obligations specified in the text of the mandate, in Article 22 of the Covenant of the League of the Nations and in the resolutions and recommendations of the competent organs of the League. They also covered the obligations assumed by the Union of South Africa as a result of its acceptance and ratification of the relationship between the Mandatory Power and the United Nations. There was, consequently, a commitment to send annual reports to the United Nations and to transmit petitions from South West Africa to the General Assembly.

36. The opinion expressed by the International Court of Justice also suggested certain other considerations, such as the duration of the present obligations of the Mandatory Power in the light of the Charter. Those obligations would remain in force until the Union of South Africa concluded with the United Nations a trusteeship agreement embodying the rights and duties of the Administering Authority in accordance with Chapters XI, XII and XII of the Charter.

37. Although the Union of South Africa was not bound by any legal obligation to conclude such an agreement and despite the fact that there was no means of compelling the Union to enter into negotiations with a view to such agreement, there was nevertheless a moral obligation for such negotiations to be undertaken without delay. Article 2, paragraph 2 of the Charter endorsed that principle. The principle of equity constituted a whole section of the Anglo-American legal system, and Sir Arnold McNair had clearly been referring to that principle when he had sought an analogy between the institution of trusteeship and that of the "trust". The obligation not to delay the negotiations to submit South West Africa to a trusteeship agreement was a form of legal obligation based on confidence and conscience, inspired by the principle of good faith.

38. He did not think that the Union of South Africa, which had a tradition of scrupulous respect for international commitments and had loyally participated in the debates in the International Court of Justice, would delay in assuming the necessary obligations.

39. Consistent with its position in the past, the Brazilian delegation would support the adoption of the advisory opinion expressed by the International Court of Justice, the recommendation that the Government of the Union of South Africa should start negotiations without delay with a view to the conclusion of a trusteeship agreement for the Territory of South West Africa at present under mandate, and the maintenance in force, pending conclusion of that agreement, of the obligations of the Union of South Africa in virtue of the Mandate for the Territory of South West Africa, including the obligation to submit to the General Assembly annual reports and petitions from communities and inhabitants of that Territory, together with any necessary information. For that reason, it had been a co-sponsor of the joint draft resolution.

40. Mr. COQUET (Mexico) observed that the question of South West Africa had been under discussion for many years. After considerable controversy, however, an advisory opinion had now been given by the International Court of Justice. The United Nations would have to adopt a resolution which would safeguard the fundamental principles of its Charter.

41. He presented a detailed analysis of the development of the question in the United Nations since the first session of the General Assembly in 1946, and quoted resolutions 9 (I), 65 (I), 141 (II), 227 (III) and 338 (IV) which had been adopted in 1946, 1947, 1948 and 1949 respectively. The latter resolution asked the International Court of Justice for an advisory opinion on the legal international status of South West Africa. The advisory opinion expressed by that Court was well known to all members of the Committee: the Territory of South West Africa was still under the international Mandate assumed by the Union of South Africa in 1920, the Union of South Africa continued to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa, and the functions of supervision over the administration of the Territory of South West Africa by the Union of South Africa should be exercised by the United Nations, to which the annual reports and the petitions must be submitted.

[4] See *Official Records of the General Assembly, Second part of first session, Fourth Committee, Part I,* 14th meeting.
[5] *Ibid., Second Session, Fourth Committee,* annex 3 a.

42. The League of Naions had set up the mandates system in the sole interest of the inhabitants of those regions and, as the International Court of Justice had stated, in conformity with the principle that the well-being and development of such peoples formed a sacred trust of civilization. The Mandatory Power must assist in the material, social and moral development of the inhabitants. No mandate had ever been intended to benefit the Mandatory Power, nor to enable it to extend its territorial rights. The "sacred trust of civilization" also included the obligation to prepare territories under mandate for the responsibilities of self-government; the question was consequently of an international character.

43. The League of Nations had exercised the functions of control and supervision, but such supervision must continue after the League had ceased to exist. The Court had affirmed that point and had stated that the United Nations was competent to exercise supervisory functions and to receive the annual reports and petitions which the Union of South Africa must submit. The Mexican delegation had always considered that the right of the population to submit petitions was fundamental. In that connexion, he recalled that the Herero people had asked the United Nations to take steps so that the lands which had always belonged to them should be returned and that the tribal and social organizations should be restored (A/C.4/L.66).

44. The Mexican delegation had therefore become a co-sponsor of the joint draft resolution, which was based on the fundamental points of the Court's advisory opinion.

45. The Union of South Africa was under a moral and legal obligation to place the Territory of South West Africa under the International Trusteeship System; that obligation was clearly indicated in Articles 75, 77 and 80 of the Charter.

46. The mandates system of the League of Nations did not operate conjointly with the Trusteeship System of the United Nations; it would continue to exist merely as a transitory measure until the mandated territories had been placed under the new system provided for in Chapters XII and XIII of the Charter. With the exception of the Union of South Africa, all the Mandatory Powers had adopted that view and had immediately complied with the precepts of the Charter. He quoted the texts of Articles 75, 77 and 80 of the Charter to show that until such time as a territory was placed under the Trusteeship System, the rights of the people in a mandated territory could not be altered unilaterally in any way; those rights were guaranteed by international instruments which were in force, and which, according to Article 80, could not be changed except under the conditions specified in that Article. If it had been intended that the mandates system should exist alongside the Trusteeship System of the United Nations, such a provision would have been made in the Charter.

47. The Member States of the United Nations would fail to comply with the provisions of the Charter if they did not support the basic principles of the joint draft resolution.

48. Mr. PEREZ CISNEROS (Cuba) and Mr. POLLERI CARRIO (Uruguay) supported the views expressed by the representatives of Brazil and Mexico.

The meeting rose at 12.50 p.m.

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