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CONTENTS

	Page
Agenda item 39: The Togoland unification problem and the future of the Trust Territory of Togoland under British administration: reports of the United Nations Plebiscite Commissioner and of the Trusteeship Council (<i>continued</i>) Draft report of the Fourth Committee: Part I. The future of Togoland under British administration (<i>concluded</i>)	115
Agenda item 38: Admissibility of hearings of petitioners by the Committee on South West Africa: Advisory opinion of the International Court of Justice (<i>concluded</i>) Draft report of the Fourth Committee	115
Agenda item 37: Question of South West Africa: report of the Committee on South West Africa (<i>continued</i>) General debate	115

Chairman: Mr. Enrique de MARCHENA
(Dominican Republic).

AGENDA ITEM 39

The Togoland unification problem and the future of the Trust Territory of Togoland under British administration: reports of the United Nations Plebiscite Commissioner and of the Trusteeship Council (A/3169 and Corr.1, A/3173 and Add.1, A/3323, A/C.4/332 and Add.1 and 2, A/C.4/334, 336, 337, A/C.4/L.439 and Add.1) (*continued*)

DRAFT REPORT OF THE FOURTH COMMITTEE: PART I.
THE FUTURE OF TOGOLAND UNDER BRITISH ADMINISTRATION (A/C.4/L.439 AND ADD.1) (*concluded*)

1. Mr. SOWARD (Canada), Rapporteur, said that in document A/C.4/L.439/Add.1, he had tried to summarize the various points of view set forth during the discussions.
2. Mr. RIVAS (Venezuela) and Mr. ROLZ BENNETT (Guatemala) expressed their appreciation of the addendum to the draft report and thanked the Rapporteur.
3. Mr. CARPIO (Philippines) said that if he had drafted the addendum himself he might have placed more emphasis on certain particular points; but the document did to some extent meet the wish he had expressed at the 570th meeting.
4. Mr. BOZOVIC (Yugoslavia) pointed out that the final sentence of paragraph 17 of the addendum gave the reader the impression that the Committee was not competent to review the provisions of the Gold Coast constitution. Actually the Committee had felt there was no need to make such a review but it would have been perfectly at liberty to decide otherwise. He therefore

recommended that the beginning of the final sentence should be amended to read: "It was preferable for the Committee not to discuss the details . . .".

It was so decided.

5. Mr. RODRIGUEZ FABREGAT (Uruguay) said that the representative of his delegation who had been present during the discussion of the matter had been unable to come to the present meeting. He therefore asked that his right should be reserved to express his views on the draft report if the occasion arose.

6. Mr. TRIANTAPHYLAKOS (Greece) felt that the first sentence of paragraph 16 of the addendum was somewhat too broad. He himself had said at the 566th meeting that he supported recognition of the choice made by the majority, but that the form which the union of Togoland and the Gold Coast would take was very important. He had intimated that he would vote in favour of the draft resolution (A/C.4/L.435 and Add.1 and 2) if it were specified that the form of union would be the subject of further discussions; but his suggestion had not been adopted.

The draft report (A/C.4/L.439 and Add.1), as amended, was adopted.

AGENDA ITEM 38

Admissibility of hearings of petitioners by the Committee on South West Africa: advisory opinion of the International Court of Justice (A/3147, A/C.4/338, A/C.4/L.441) (*concluded*)

DRAFT REPORT OF THE FOURTH COMMITTEE
(A/C.4/L.441)

The draft report was adopted.

AGENDA ITEM 37

Question of South West Africa: report of the Committee on South West Africa (A/3151 and Corr.1, A/C.4/338) (*continued*)

GENERAL DEBATE

7. Mr. OSMAN (Egypt) thanked the petitioners for the assistance they had given to the Committee. Despite the concern expressed by the United Nations over the lot of the indigenous people of South West Africa, the Union Government persisted in its inflexible attitude. The juridical and moral principles embodied in the Trusteeship System, the Charter of the United Nations, the resolutions of the General Assembly and the opinions of the International Court of Justice had not succeeded in persuading the South African Government that the Territory should be placed under international protection and that its inhabitants deserved to be treated as human beings.

8. The wretched conditions under which they lived had been adequately described in the report of the Committee on South West Africa (A/3151 and Corr.1)

and by the petitioners. The South African Government had paid very little heed to the opinion of the United Nations when the latter had attempted to safeguard the rights and protect the welfare of the indigenous peoples of the Territory. The Committee on South West Africa had reported that the international status of South West Africa was seriously jeopardized, the Union persisting in the arbitrary extension of its sovereignty over the Territory. Such a policy must be categorically condemned. There was no question but that sovereignty belonged to the people of South West Africa themselves. It was time for the United Nations to take steps to ensure that justice and law prevailed in that part of Africa.

9. Mr. JAHANBANI (Iran) recalled that South West Africa was the only formerly mandated territory that had not yet been placed under the Trusteeship System. In attempting to incorporate South West Africa into its own territory, the Union of South Africa failed to honour its obligations, as was clear from the statement made on 5 May 1955 by the South African Minister of External Affairs, quoted in paragraph 10 of the report of the Committee on South West Africa. The South African Government maintained that the Mandate was a contract between a mandator and a mandatory. The League of Nations had stated in its final resolution¹ that "on the termination of the League's existence, its functions with respect to the mandated territories will come to an end", and therefore the Union of South Africa was henceforth free to consider the future status of South West Africa as a domestic matter. But on page 132 of its advisory opinion of 1950,² the International Court of Justice had specified that the "Mandate had only the name in common with the notions of mandate in national law". In international law the mandator was the international community, which as such could not cease to exist. Moreover, if the Mandate had lapsed, the authority exercised by the Union over South West Africa by virtue of the Mandate would also have lapsed. Again, the League of Nations had added, in paragraph 4 of its final resolution, that League members administering territories under the Mandate should continue "to administer them for the well-being and development of all the peoples concerned, in accordance with the obligations contained in the respective Mandates, until other arrangements have been agreed between the United Nations and the respective Mandatory Powers." As long as the Territory was not a Trust Territory, the South African Government therefore had a number of obligations regarding the Mandate—to submit annual reports which, as there was no more League of Nations, should be examined by the United Nations; to allow the inhabitants to make use of their right of petition; and to recognize the jurisdiction of the International Court of Justice.

10. The Union of South Africa also had obligations under the Charter of the United Nations. South West Africa was one of the Territories referred to in Article 77, paragraph 1. Even if the Union was not obliged to place South West Africa under trusteeship, there were only two courses open: either trusteeship or the

grant of full independence. To maintain that the Mandatory Powers were under no obligation to negotiate agreements to convert mandated territories into Trust Territories was to say that the Charter had set up a system which had never had more than a theoretical existence. Article 80 of the Charter too implied that the Union had the international obligation to negotiate and conclude an agreement with the United Nations. Until such a trusteeship agreement was signed, the Iranian delegation believed that the provisions of Chapter XI of the Charter were applicable to the Territory of South West Africa. The South African representative had himself acknowledged as much to the Fourth Committee in 1946 and also at the second session of the General Assembly when he presented the Union's report for 1946 on the Territory of South West Africa.³ He had stated that the information being submitted was the same as that required under Article 73 of the Charter for Non-Self-Governing Territories. The Union of South Africa was therefore under an obligation to promote the progress of the inhabitants of South West Africa, to assist them in the development of free political institutions, and to submit an annual report.

11. The only data available to the Fourth Committee were those in the report of the Committee on South West Africa (A/3151 and Corr.1). The Iranian delegation was deeply concerned over the serious situation in the Territory and regretted that the South African delegation was absent at the very moment when the Fourth Committee was considering the matter. Greater co-operation by the Union of South Africa was the only way to break the deadlock. The Iranian delegation fully supported the conclusions of the Committee on South West Africa and shared its belief that the situation of South West Africa needed close re-examination by the General Assembly.

12. Mr. PACHACHI (Iraq) noted that the gap between the views of the majority of Member States and those of the South African Government had been steadily widening since 1946. Yet there was nothing wrong in hoping that the Union would ultimately change its attitude and follow the course of reason by agreeing to universally accepted principles.

13. He considered it futile to reopen the legal debate. The relevant legal issues had been settled once and for all in the advisory opinion given by the International Court of Justice in 1950. It had to be remembered, however, that the advisory opinion did not reflect the desires of the majority of Member States, the general view being that the Territory should be placed under the Trusteeship System. It was in a spirit of compromise that the Assembly had accepted the advisory opinion, in the hope that the Union, acting in the same spirit and out of respect for the Court, would also accept it. The Union had not done so; on the contrary, its attitude had stiffened still further. It could, however, hardly expect the General Assembly to declare its own resolutions null and void. Moreover, even if the Assembly was willing to withdraw, what guarantee would it have that South West Africa would be administered in accordance with the spirit of the Mandate? In the light of the conditions now prevailing in the Territory and the policies of the South African Government, would it be reasonable to take the Union's assurances

¹ League of Nations, *Official Journal, Special Supplement No. 194*, pp. 278-279.

² *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.* (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/1362.)

³ *Report by the Government of the Union of South Africa on the Administration of South-West Africa for the year 1946*, Pretoria, Government Printer, 1947.

at face value? The Assembly had no choice but to abide strictly by the advisory opinion of the Court and to continue trying to exercise the supervisory functions envisaged by the Mandates System. Meanwhile, in the absence of co-operation from the Union, the Committee on South West Africa must carry out its functions as best it could. It was obvious that that was far from being an ideal solution. The fact of entrusting to an organ of the United Nations functions that belonged to a system of supervision not envisaged in the Charter had given rise to a difficult and abnormal situation which only the Union Government could remedy.

14. He congratulated the members of the Committee on South West Africa on their excellent work and expressed deep regret at the absence of the South African delegation and, more particularly, of Mr. Sole. It was only through the participation of the Union of South Africa in the Fourth Committee's work that the United Nations could hear the views of the Mandatory Power on the situation in the Mandated Territory. He also regretted that owing to the Union of South Africa's refusal to co-operate with the Committee the report presented a very incomplete picture of the conditions; and he agreed with the Committee that the South African Government must take full responsibility for any errors or omissions in the report.

15. Turning to annex II of the Committee's report, containing observations regarding conditions in the Territory, he said that he shared the Committee's apprehensions in view of the South African Government's manifest intention to annex the Territory, which was clear from official statements made in 1955 (annex II, paras. 8 to 10) and from decisions taken in that year, such as the amendment of the South West Africa Affairs Amendment Act of 1949 concerning the Territory's representation in the Union Parliament. He had not yet reached any firm conclusions regarding the Committee's recommendation that the General Assembly should consider the desirability of clarifying the legal effects and implications of the representation of South West Africa in the Union Parliament, and he would await concrete proposals before expressing his views.

16. He cited a number of instances where the Committee on South West Africa had noted improvements in the situation in the Territory, e.g., in paragraphs 53, 81, 95 and 105, referring to economic conditions, and paragraph 112, in which the Committee viewed with satisfaction the construction of new and improved housing for non-Europeans. The Committee had noted the greatest progress in public health (annex II, paras. 122 and 123). His delegation joined the Committee in applauding those achievements but only wished there were more of them.

17. In the political sphere there were still many laws and practices which were contrary to the spirit of the Mandate and to the best interests of the indigenous inhabitants. With regard to the status of the inhabitants he endorsed the Committee's recommendation that legislation should be promulgated at the earliest opportunity to define their status.

18. In the economic sphere, the Committee had drawn attention to a number of very serious problems which urgently required solution by the Mandatory Power. Among them was the problem arising from the South West Africa Native Affairs Administration Act, 1954, providing that land and other assets of the Territory should be vested in the South African Native Trust.

The Committee had also pointed out that the alienation of land was continuing without any proper safeguards for the interests of the inhabitants. There was a liberal policy of transfer of indigenous land to Europeans, but land once acquired by Europeans would probably never again pass into the hands of indigenous inhabitants, as the laws of the Territory strictly prohibited the transfer of land to indigenous inhabitants, Asians or Coloured persons.

19. In the social sphere the Union Government had apparently devoted considerable attention to the question of housing. According to paragraphs 109, 110 and 111, however, the *apartheid* laws of the Union were applied strictly with respect to housing in the Territory. Examples of discrimination such as buffer zones should have no place in a Territory that was supposed to be administered in the spirit of the Mandate. With regard to labour, his delegation endorsed the recommendation made by the Committee in paragraph 135 of annex II, to the effect that urgent attention should be given to raising the standards of working conditions for Native labourers.

20. In the sphere of education the conclusions stated by the Committee in paragraph 163 seem to be well-founded, and the situation was apparently far from satisfactory in view of the excessive disparities in expenditure between the various population groups.

21. The conclusions stated in paragraphs 164 to 168 seemed to be fully justified. He was struck by the tone of moderation and restraint of the Committee's observations. It was an understatement to say that the present conditions of the indigenous inhabitants were "still far from meeting . . . the standards of either endeavour or achievement implicit in the purposes of the Mandates System and in the attitudes prevailing generally today in respect of peoples not yet able to stand by themselves". The Native of South West Africa was in fact poor, ignorant, insecure and desperate. He was subjected to daily humiliations, to merciless exploitation and to all the indignities that accompanied racial discrimination; and he was scorned by those who owed their wealth and their comfort to his labour. Such were the conditions in a Territory in which the inhabitants were supposed to enjoy the benefits and safeguards of international protection and supervision.

22. His delegation agreed with the Committee that the situation required close re-examination by the General Assembly and would welcome any initiation in that direction.

23. Replying to inquiries by Mr. MAUGASHA (Ethiopia) and Mr. RODRIGUEZ FABREGAT (Uruguay), the CHAIRMAN said that the Committee would be able to put questions to the petitioners when it had received the text of their statements.

24. Mr. KHOMAN (Thailand), answering certain criticisms made by Mr. Getzen at the 571st meeting, who had regretted that the Committee on South West Africa had seen fit to express satisfaction at the adoption of Ordinance No. 26 of 1954, said that that ordinance did not prohibit the employment of boys under sixteen in mines, but only their employment on underground work. The provisions of section 104 of the Ordinance were reproduced verbatim in document A/C.73/L.7 and an accurate summary was given in paragraph 154 of the report of the Committee on South West Africa to the tenth session of the General Assembly (A/2913). In paragraph 153 of the same report,

the Committee had noted that the Union Government had agreed in 1949 to apply to South West Africa International Labour Convention No. 45 concerning the employment of women on underground work in mines of all kinds. Accordingly, the Committee had merely noted with satisfaction that Ordinance No. 26 now embodied the principle of that Convention.

25. The Committee had also been criticized, in connexion with paragraphs 121 to 126 of annex II of document A/3151, for having congratulated the Union

on the development of medical services in the Territory. The Committee felt that it was its responsibility to report to the Assembly all improvements that it had been able to observe in the Territory, but that did not in any sense mean that it found the situation satisfactory. It had not hesitated to state its opinion frankly, in the conviction that its primary duty was to submit an objective report to the General Assembly.

The meeting rose at 4.35 p.m.