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QUESTION OF SOUTH WEST AFRICA

ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Fourth Committee

Rapporteur: Mr. P. ANKER (Norway)

1. The General Assembly, at its 285th plenary meeting on 26 September 1950, decided to refer the item entitled "Question of South West Africa: advisory opinion of the International Court of Justice" to the Fourth Committee for consideration and report.
2. The general debate on the item began at the 190th meeting of the Committee, and continued until the 196th meeting.
3. Five draft resolutions and a number of amendments thereto were submitted for the consideration of the Committee. The draft resolutions fell into two groups as follows:
 - I. Three draft resolutions concerning the implementation of the advisory opinion of the International Court of Justice (A/C.4/L.116/Rev.1 submitted by Brazil, Cuba, Mexico, Syria and Uruguay; A/C.4/L.121 submitted by India,

Indonesia and the Philippines; and A/C.4/L.124/Rev.1 submitted by Denmark, El Salvador, Iraq, Norway, Peru, Thailand, the United States of America and Venezuela).

II. Two draft resolutions concerning the application of the International Trusteeship System to South West Africa (A/C.4/L.122 submitted by India, Indonesia and the Philippines; and A/C.4/L.128 submitted by Cuba, Ecuador, Guatemala, Mexico and Uruguay).

4. The Committee considered the draft resolutions from its 195th to its 198th meetings as referred to in detail below.

I. IMPLEMENTATION OF THE ADVISORY OPINION OF THE
INTERNATIONAL COURT OF JUSTICE

5. The delegations of Brazil, Cuba, Mexico, Syria and Uruguay submitted a draft resolution which in its revised form (A/C.4/L.116/Rev.1) read as follows:

"The General Assembly,

Considering that the General Assembly by its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948 and 337 (IV) of 6 December 1949 recommended that the Mandated Territory of South West Africa be placed under the International Trusteeship System and urged the Government of the Union of South Africa to submit a trusteeship agreement for the Territory,

Considering that the International Court of Justice, duly consulted by the General Assembly pursuant to resolution 338 (IV) of 6 December 1949, reached the conclusion that the Territory of South West Africa is still a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920,

Considering that the International Court of Justice is of the opinion that the Union of South Africa acting alone is not competent to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa, acting with the consent of the United Nations,

Considering that the International Court of Justice is of the opinion that the Union of South Africa continues to be subject to the international obligations laid down in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa,

Considering that the International Court of Justice is of the opinion that 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 should be submitted,

Considering that the International Court of Justice is of the opinion that the Union of South Africa continues to be subject to the obligation to transmit petitions from the inhabitants of the Territory of South West Africa,

Considering that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations and by Article 7 of the Mandate for South West Africa,

1. Decides that the Government of the Union of South Africa should continue to administer the Territory of South West Africa in accordance with the Mandate conferred by the Principal Allied and Associated Powers upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa;

2. Requests the Government of the Union of South Africa to submit to the United Nations, before 1 June 1951, a report on the administration of the Territory of South West Africa during the years 1947, 1948, 1949 and 1950 in accordance with the questionnaire adopted by the Permanent Mandates Commission of the League of Nations and also, in due course, reports relating to the subsequent years;

3. Requests the Government of the Union of South Africa to transmit to the Secretary-General, with such additional observations as it may deem necessary, all petitions relating to the Territory of South West Africa;

4. Establishes a Commission for South West Africa to assist the General Assembly in the consideration of the annual reports, petitions and all other matters relating to the Mandated Territory of South West Africa in accordance with the following instructions and procedures which the General Assembly laid down in the exercise of its functions of control over the administration of South West Africa;

(a) The Commission for South West Africa shall be composed of ten experts appointed on the basis of their qualifications and expert knowledge by...*

* After adoption of the resolution the countries will be chosen by the Fourth Committee on the basis of equitable geographical distribution.

(b) The Commission for South West Africa shall hold the meetings necessary for the accomplishment of its task; its first meeting shall be held on 1 July 1951;

(c) The Commission for South West Africa shall decide upon its own rules of procedure and for that purpose shall, as far as possible, follow the procedure adopted in that matter by the Permanent Mandates Commission of the League of Nations for consideration of reports and petitions;

(d) The agenda of the first session of the Commission for South West Africa shall include consideration of the Act adopted by the Parliament of the Union of South Africa regarding representation of South West Africa in that Parliament the text of which was transmitted to the Secretary-General of the United Nations by the South African delegation on 11 July 1949. The Commission shall give its opinion on the extent to which that law, or any other measure taken by the Union of South Africa with regard to the Territory after the last report submitted to the League of Nations, conforms with the provisions of the Mandate for South West Africa and with the purposes of the Mandate system as set forth in Article 22 of the Covenant of the League of Nations and in the Mandate itself;

(e) The Government of the Union of South Africa shall be invited to delegate a special representative to the Commission for South West Africa in accordance with the rules of procedure established by the Permanent Mandates Commission of the League of Nations;

5. Recommends that the Commission for South West Africa should submit annual reports to the General Assembly for consideration. Such reports shall contain an analysis of conditions in the Mandated Territory and observations, conclusions and recommendations regarding the fulfilment by the Mandatory Power, of the obligations set forth in the Mandate."

6. The delegations of India, Indonesia and the Philippines submitted a draft resolution (A/C.4/L.121) reading as follows:

"The General Assembly,

Recalling its previous resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) and 338 (IV) of 6 December 1949 concerning the Territory of South West Africa, and in particular, that by resolution 338 (IV) the General Assembly considered that it was desirable that the General Assembly, for its further consideration of the question, should obtain an advisory opinion of the International Court of Justice on its legal aspects,

Noting that the International Court of Justice has rendered an advisory opinion on the International Status of South West Africa on 11 July 1950, and

Noting that it is the opinion of the Court:

(a) That South West Africa is a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920,

(b) That the Union of South Africa continues 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 as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice, to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court,

1. Declares that it is incumbent upon the Government of the Union of South Africa, pending the determination of the future status of South West Africa by agreement between the Union of South Africa and the United Nations, to promote to the utmost in the administration of the Territory the material and moral well-being and social progress of its inhabitants as a sacred trust of civilization, subject to the existing Mandate, and to give effect to the obligations which it assumed under the Mandate;

2. Calls upon the Government of the Union of South Africa to submit to the General Assembly in 1951 a report for the consideration of the next session of the Assembly on the administration of the Territory during the years 1947 to 1950 containing full information with regard to the Territory and indicating the measures taken to carry out the obligations assumed under the Mandate;

3. Calls upon the Union of South Africa to transmit to the Secretary-General all petitions received by it which relate to the Territory and people of South West Africa;

4. Establishes an Ad Hoc Committee on South West Africa to examine the annual report and the petitions relating to the Territory and to present its observations thereon to the General Assembly; the Ad Hoc Committee shall advise the Assembly on all matters relating to South West Africa; and perform such other functions as may be entrusted to it by the General Assembly.

The Ad Hoc Committee on South West Africa shall consist of ten specially qualified persons selected by the following Member States:

It shall meet at such time and place as may be determined by the Secretary-General. Its procedure in the consideration of the annual report and of petitions shall conform as far as possible to the procedure followed by the Mandates Commission of the League of Nations and shall otherwise conform to the rules of procedure of the Committees of the General Assembly;

5. Invites the Government of the Union of South Africa to designate a duly authorized representative who should be prepared to offer to the Ad Hoc Committee on South West Africa any supplementary explanations or supplementary information as the Committee may request."

7. The delegations of Denmark, El Salvador, Iraq, Norway, Peru, Thailand, the United States of America and Venezuela submitted a draft resolution which in its revised form (A/C.4/L.124/Rev.1) read as follows:

"The General Assembly,

Having requested, by its resolution 338 (IV) of 6 December 1949, the International Court of Justice to render an advisory opinion on the following questions:

"What is the international status of the Territory of South West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular:

"(a) Does the Union of South Africa continue to have international obligations under the Mandate for South West Africa and, if so, what are those obligations?

"(b) Are the provisions of Chapter XIII of the Charter applicable and, if so, in what manner, to the Territory of South West Africa?

"(c) Has the Union of South Africa the competence to modify the international status of the Territory of South West Africa, or, in the event of a negative reply, where does competence rest to determine and modify the international status of the Territory?"

1. Takes note of the advisory opinion of the Court rendered on 11 July 1950 to the effect:

"On the general question:

"that South West Africa is a territory under the international Mandate assumed by the Union of South Africa on 17 December 1920:

"On Question (a):

"that the Union of South Africa continues 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 as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court;

"On Question (b):

"that the provisions of Chapter XIII of the Charter are applicable to the Territory of South West Africa in the sense that they provide a means by which

the Territory may be brought under the Trusteeship System;

"that the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the Territory under the Trusteeship System;

"On question (c):

"that the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations,";

2. Accepts and endorses the advisory opinion of the International Court of Justice with respect to South West Africa;

3. Urges the Government of the Union of South Africa to take the necessary steps to give effect to the opinion of the Court;

4. Establishes a Committee (composed of the President of the Trusteeship Council; the Chairman of the Fourth Committee, and the present Chairman of the Interim Committee) to confer with the Union of South Africa concerning measures necessary to implement the advisory opinion of the International Court of Justice to report its findings and make its recommendations to the next regular session of the General Assembly."

8. At the 195th meeting, the delegation of Denmark proposed that the Committee should consider first the joint draft resolution of Denmark, El Salvador, Iraq, Norway, Peru, Thailand, the United States of America and Venezuela (A/C.4/L.124/Rev.1). The proposal was rejected in a tie-vote by 21 votes to 21, with 4 abstentions.

9. During the discussion on the draft resolutions, the delegations of India, Indonesia and the Philippines stated that they would be ready to withdraw their draft resolution (A/C.4/L.121) if the sponsors of the draft resolution set forth in document A/C.4/L.11 Rev.1 would accept certain amendments proposed orally by the representative of India on behalf of the sponsors. The delegations of Brazil, Cuba, Mexico, Syria and Uruguay accepted the proposed amendments and consequently the draft resolution set forth in document A/C.4/L.121 was withdrawn. Subsequently, the amendments were submitted in writing (A/C.4/L.129) as follows:

To replace paragraph 1 of the operative part by the following text:

"1. Declares that it is incumbent upon the Government of the Union of South Africa, pending the determination of the future status of South West Africa by agreement between the Union of South Africa and the United Nations, to promote to the utmost in the administration of the Territory the material and moral well-being and social progress of its inhabitants as a sacred trust of civilization, subject to the existing Mandate, and to give effect to the obligations which it assumed under the Mandate;"

To replace the second sentence of paragraph 4 (b) of the operative part by the following text:

"It shall meet at such time and place as may be determined by the Secretary-General;"

To delete paragraph 4 (e) of the operative part;

To insert a paragraph after paragraph 4 of the operative part reading as follows:

"5. Invites the Government of the Union of South Africa to designate a duly authorized representative who should be prepared to offer to the Commission for South West Africa any supplementary explanations or supplementary information as the Committee may request;"

To change the number of paragraph 5 of the operative part to paragraph 6;

To add at the end of paragraph 6 of the operative part the following text:

"... The Commission shall advise the Assembly on all matters relating to South West Africa, and perform such other functions as may be entrusted to it by the General Assembly."

10. At the 196th meeting, the Committee voted upon the modified joint draft resolution as follows:

PREAMBLE

Paragraph 1: The paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Belgium, France, Greece, Union of South Africa.

Abstaining: Argentina, Australia, Canada, Chile, Colombia, Denmark, El Salvador, Ethiopia, Iraq, Israel, Netherlands, New Zealand,

Norway, Peru, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

The paragraph was adopted by 28 votes to 4, with 19 abstentions.

Paragraphs 2 - 7: The paragraphs were voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, China, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Saudi Arabia, Syria, Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Denmark, France, Greece, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Argentina, Byelorussian Soviet Socialist Republic, Canada, Chile, Colombia, Czechoslovakia, El Salvador, Ethiopia, Iraq, Israel, Netherlands, New Zealand, Nicaragua, Norway, Peru, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Venezuela.

The paragraphs were adopted by 22 votes to 9, with 20 abstentions.

OPERATIVE PART

Paragraph 1: The paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Denmark, France, Greece, Netherlands, Norway, Sweden, Thailand, Union of South Africa.

Abstaining: Argentina, Canada, Chile, Colombia, El Salvador, Ethiopia, Iraq, Israel, New Zealand, Nicaragua, Peru, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

The paragraph was adopted by 27 votes to 10, with 14 abstentions.

Paragraph 2: The paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico,

Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

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

Abstaining: Argentina, Chile, Colombia, Dominican Republic, El Salvador, Ethiopia, Iraq, Israel, Nicaragua, United States of America, Venezuela.

The paragraph was adopted by 26 votes to 14, with 11 abstentions.

Paragraphs 3 and 4 up to and including sub-paragraph (b) of paragraph 4: The paragraphs were voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

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

Abstaining: Colombia, Dominican Republic, El Salvador, Ethiopia, Iraq, Nicaragua.

The paragraphs were adopted by 26 votes to 19 with 6 abstentions.

Paragraph 4 (c): The sub-paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, China, Cuba, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Saudi Arabia, Syria, Uruguay, Yemen, Yugoslavia.

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

Abstaining: Byelorussian Soviet Socialist Republic, Colombia, Czechoslovakia, Dominican Republic, El Salvador, Ethiopia, Iraq, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

The sub-paragraph was adopted by 21 votes to 20 with 10 abstentions.

Paragraph 4 (d): The sub-paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, China, Cuba, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Saudi Arabia, Syria, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Byelorussian Soviet Socialist Republic, Canada, Chile, Czechoslovakia, Denmark, El Salvador, France, Greece, Israel, Netherlands, New Zealand, Norway, Peru, Poland, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Colombia, Dominican Republic, Ethiopia, Iraq, Nicaragua.

The sub-paragraph was rejected by 25 votes to 21 with 5 abstentions.

Paragraphs 5 and 6: The paragraphs were voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Canada, Chile, Denmark, El Salvador, France, Greece, Israel, Netherlands, New Zealand, Nicaragua, Norway, Peru, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Colombia, Dominican Republic, Ethiopia, Iraq.

The paragraphs were adopted by 26 votes to 21 with 4 abstentions.

The draft resolution as a whole as modified was voted by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Canada, Chile, Denmark, El Salvador, France, Greece, Iraq, Israel, Netherlands, New Zealand, Nicaragua, Norway, Peru, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Argentina, Colombia, Dominican Republic, Ethiopia.

The draft resolution as a whole as modified was adopted by 26 votes to 21 with 4 abstentions.

11. The Chairman announced that if and when the General Assembly approved the draft resolution the Fourth Committee would meet to take the action required under paragraph 4 (a) of the resolution.

12. The text of the draft resolution is reproduced at the end of the present report as resolution I.

13. The Chairman ruled that in view of the adoption of the draft resolution, no vote should be taken on the draft resolution set forth in document A/C.4/L.124/Rev.1.

II. APPLICATION OF THE INTERNATIONAL TRUSTEESHIP SYSTEM TO SOUTH WEST AFRICA

14. The delegations of India, Indonesia and the Philippines submitted a draft resolution (A/C.4/L.122) reading as follows:

"The General Assembly,

Reaffirming its previous resolutions 65 (I) of 14 December 1946 and 141 (II) of 1 November 1947 recommending that the Territory of South West Africa be placed under the International Trusteeship System,

Having noted the conclusions of the International Court of Justice:

(a) That the provisions of Chapter XII of the Charter are applicable to the Territory of South West Africa in the sense that they provide a means by which the Territory may be brought under the Trusteeship System,

(b) That the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the Territory under the Trusteeship System,

(c) That the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations,

Having noted further that the Court, in its advisory opinion, did not feel called upon to pronounce on the political or moral duties which the foregoing considerations may involve,

1. Endorses the further conclusions of the Court that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter;

2. Requests the Ad Hoc Committee on South West Africa to examine the provisions and working of the South West Africa Affairs Amendment Act of 1949 and make a report thereon on to the next session of the General Assembly."

15. The delegations of Cuba, Ecuador, Guatemala, Mexico and Uruguay submitted a draft resolution (A/C.4/L.128) reading as follows:

"The General Assembly,

Considering that the General Assembly by its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948 and 337 (IV) of 6 December 1949 recommended that the mandated Territory of South West Africa be placed under the International Trusteeship System and invited the Government of the Union of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the aforesaid Territory,

Considering that the International Court of Justice duly consulted by the General Assembly in pursuance of resolution 338 (IV) of 6 December 1949, delivered the opinion that the Territory of South West Africa is under the international mandate assumed by the Union of South Africa on 17 December 1920,

Considering that in accordance with Articles 75, 77 (a), 79 and 80(2) of the Charter of the United Nations the Trusteeship System has been applied to all former mandated territories with the sole exception of the territory of South West Africa,

Considering that under the terms of the Charter of the United Nations it is clear that the International Trusteeship System takes the place of the former system of mandates instituted by the League of Nations, and further that there is no specific provision indicating the permanent co-existence of the mandates system with the International Trusteeship System,

1. Reiterates its resolution 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948 and 337 (IV) of 6 December 1949 to the effect that the Territory of South West Africa be placed under the International Trusteeship System;

2. Reiterates its earlier invitations to the Government of the Union of South Africa requesting the said Government to submit to the General Assembly

not later than 1 June 1950 a draft trusteeship agreement for the Territory of South West Africa;

3. Invites the Trusteeship Council to examine the draft trusteeship agreement when submitted by the Union of South Africa and to present a report thereon to the sixth session of the General Assembly."

16. In the course of the discussion, the delegations of India, Indonesia and the Philippines stated that they would be ready to withdraw their draft resolution (A/C.4/L.122) if the sponsors of the draft resolution set forth in document A/C.4/L.128 would accept an amendment to replace paragraphs 2 and 3 of the operative part by the following text:

"Reiterates that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XIII of the Charter,"

On the acceptance of this amendment the delegations of India, Indonesia and the Philippines withdrew their draft resolution.

17. The delegation of the Union of Soviet Socialist Republics submitted an amendment (A/C.4/L.126) to the draft resolution proposed by India, Indonesia and the Philippines. After this draft resolution was withdrawn, the delegation of the Union of Soviet Socialist Republics introduced the same amendment (A/C.4/L.130) to the draft resolution proposed by Cuba, Ecuador, Guatemala, Mexico and Uruguay. This amendment was to insert after paragraph 1 of the operative part a paragraph reading as follows:

"2. Notes that the action of the Union of South Africa in adopting a law on the incorporation of South West Africa in the Union of South Africa constitutes a violation of the Charter of the United Nations;"

18. Following a suggestion made by the Rapporteur the sponsors modified paragraph 3 of the preamble to read as follows:

"Considering that in accordance with Articles 75, 77(a), 79 and 80(2) of the Charter of the United Nations the Trusteeship System has been applied to all mandated territories which have not achieved independence, with the sole exception of the territory of South West Africa,"

19. The joint draft resolution as modified and the amendment thereto were voted upon at the 196th meeting as follows:

Insertion of new paragraph: The amendment to add a new paragraph after paragraph 1 of the operative part as proposed by the delegation of the Union of Soviet Socialist Republics was voted upon by roll-call as follows:

In favour: Byelorussian Soviet Socialist Republic, Czechoslovakia, Guatemala, Haiti, Indonesia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

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

Abstaining: Afghanistan, Brazil, Burma, China, Cuba, Dominican Republic, Ecuador, Egypt, India, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Peru, Philippines, Saudi Arabia, Syria, Uruguay, Venezuela.

The amendment was rejected by 16 votes to 9 with 22 abstentions.

Paragraph 1 of the preamble: The paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Peru, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia.

Against: Belgium, France, Sweden, Union of South Africa.

Abstaining: Argentina, Australia, Canada, Chile, Denmark, Greece, Israel, Netherlands, New Zealand, Norway, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America.

The paragraph was adopted by 30 votes to 4 with 13 abstentions.

Paragraph 2 of the preamble: The paragraph was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, China, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Peru, Philippines, Saudi Arabia, Syria, Uruguay, Venezuela, Yugoslavia.

Against: Belgium, Sweden, Union of South Africa

Abstaining: Argentina, Australia, Byelorussian Soviet Socialist Republic, Canada, Chile, Czechoslovakia, Denmark, France, Greece, Israel, Netherlands, New Zealand, Norway, Poland, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

The paragraph was adopted by 25 votes to 3 with 19 abstentions.

Paragraphs 3 and 4 of the preamble and paragraphs 1 and 2 of the operative part:

The paragraphs were voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: Australia, Belgium, Canada, France, Greece, Netherlands, Norway, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Argentina, Chile, Denmark, Israel, New Zealand, Peru, United States of America, Venezuela.

The paragraphs were adopted by 27 votes to 11 with 8 abstentions.

The draft resolution as a whole was voted upon by roll-call as follows:

In favour: Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador, Egypt, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: Australia, Belgium, Canada, France, Greece, Netherlands, Norway, Peru, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Argentina, Chile, Denmark, Dominican Republic, Israel, New Zealand, United States of America, Venezuela.

The draft resolution as a whole was adopted by 27 votes to 12 with 8 abstentions.

20. The text of the draft resolution is reproduced at the end of the present report as resolution II.

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21. The Fourth Committee therefore recommends to the General Assembly the adoption of the following resolutions:

QUESTION OF SOUTH WEST AFRICA

RESOLUTION I

The General Assembly,

Considering that the General Assembly, by its resolutions 65(I) of 14 December 1946, 141(II) of 1 November 1947, 227(III) of 26 November 1948 and 337(IV) of 6 December 1949 recommended that the Mandated Territory of South West Africa be placed under the International Trusteeship System and urged the Government of the Union of South Africa to submit a trusteeship agreement for the Territory,

Considering that the International Court of Justice, duly consulted by the General Assembly pursuant to resolution 338(IV) of 6 December 1949, reached the conclusion that the Territory of South West Africa is still a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920,

Considering that the International Court of Justice is of the opinion that the Union of South Africa acting alone is not competent to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations,

Considering that the International Court of Justice is of the opinion that the Union of South Africa continues to be subject to the international obligations laid down in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa,

Considering that the International Court of Justice is of the opinion that 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 should be submitted,

Considering that the International Court of Justice is of the opinion that the Union of South Africa continues to be subject to the obligation to transmit petitions from the inhabitants of the Territory of South West Africa,

Considering that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations and by Article 7 of the Mandate for South West Africa,

1. Declares that it is incumbent upon the Government of the Union of South Africa, pending the determination of the future status of South West Africa by agreement between the Union of South Africa and the United Nations, to promote to the utmost in the administration of the Territory the material and moral well-being and social progress of its inhabitants as a sacred trust of civilization, subject to the existing Mandate, and to give effect to the obligations which it assumed under the Mandate;
2. Requests the Government of the Union of South Africa to submit to the United Nations, before 1 June 1951, a report on the administration of the Territory of South West Africa during the years 1947, 1948, 1949 and 1950 in accordance with the questionnaire adopted by the Permanent Mandates Commission of the League of Nations and also, in due course, reports relating to the subsequent years;
3. Requests the Government of the Union of South Africa to transmit to the Secretary-General, with such additional observations as it may deem necessary, all petitions relating to the Territory of South West Africa;

4. Establishes a Commission for South West Africa to assist the General Assembly in the consideration of the annual reports, petitions and all other matters relating to the Mandated Territory of South West Africa in accordance with the following instructions and procedures which the General Assembly laid down in the exercise of its functions of control over the administration of South West Africa:

(a) The Commission for South West Africa shall be composed of ten experts appointed on the basis of their qualifications and expert knowledge by...*

(b) The Commission for South West Africa shall hold the meetings necessary for the accomplishment of its task; it shall meet at such time and place as may be determined by the Secretary-General;

(c) The Commission for South West Africa shall decide upon its own rules of procedure and for that purpose shall, as far as possible, follow the procedure adopted in that matter by the Permanent Mandates Commission of the League of Nations for the consideration of reports and petitions;

5. Invites the Government of the Union of South Africa to designate a duly authorized representative who should be prepared to offer to the Commission for South West Africa any supplementary explanations or supplementary information as the Commission may request;

6. Recommends that the Commission for South West Africa should submit annual reports to the General Assembly for consideration. Such reports shall con-

* After adoption of the resolution the countries will be chosen by the Fourth Committee on the basis of equitable geographical distribution.

tain an analysis of conditions in the Mandated Territory and observations, conclusions and recommendations regarding the fulfilment, by the Mandatory Power, of the obligations set forth in the Mandate. The Commission shall advise the Assembly on all matters relating to South West Africa, and perform such other functions as may be entrusted to it by the General Assembly.

RESOLUTION II

The General Assembly,

Considering that the General Assembly by its resolutions 65(I) of 14 December 1946, 141(II) of 1 November 1947, 227(III) of 26 November 1948 and 337(IV) of 6 December 1949 recommended that the Mandated Territory of South West Africa be placed under the International Trusteeship System and invited the Government of the Union of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the aforesaid Territory,

Considering that the International Court of Justice, duly consulted by the General Assembly in pursuance of resolution 338(IV) of 6 December 1949, delivered the opinion that the Territory of South West Africa is under the international Mandate assumed by the Union of South Africa on 17 December 1920,

Considering that in accordance with Articles 75, 77a, 79 and 80, paragraph 2, of the Charter of the United Nations the Trusteeship System has been applied to all mandated territories which have not achieved independence, with the sole exception of the territory of South West Africa,

Considering that, under the terms of the Charter of the United Nations, it is clear that the International Trusteeship System takes the place of the former system of mandates instituted by the League of Nations and, further, that there is no specific provision indicating the permanent co-existence of the Mandates System with the International Trusteeship System,

1. Reiterates its resolutions 65(I) of 14 December 1946, 141(II) of 1 November 1947, 227(III) of 26 November 1948 and 337(IV) of 6 December 1949 to the effect that the Territory of South West Africa be placed under the International Trusteeship System;

2. Reiterates that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter.
