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Chairman: Mr. Luciano JOUBLANC RIVAS
(Mexico).

AGENDA ITEM 30

Question of South West Africa

1. The CHAIRMAN suggested that the question of South West Africa should be discussed in three separate stages: first, the advisory opinion of the International Court of Justice; secondly, the substantive aspects of the report of the Committee on South West Africa (A/2913 and Add. 1); and, thirdly, the question of the admissibility of oral hearings (A/2913/Add. 2).

There being no objections, it was so decided.

AGENDA ITEM 30

Question of South West Africa:

(a) **Voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa: advisory opinion of the International Court of Justice (A/2918, A/C.4/L.405)**

2. Mr. BELL (United States of America) said that the draft resolution (A/C.4/L.405) which his delegation was sponsoring together with the delegations of Mexico, Pakistan, Saudi Arabia, Syria and Thailand was simple and straightforward. It called upon the General Assembly to accept and endorse the advisory opinion of 7 June 1955 of the International Court of Justice.¹ In that opinion the Court held unanimously that the voting procedure embodied in special rule F adopted by the General Assembly in resolution 844 (IX) correctly interpreted the Court's 1950 advisory opinion on South West Africa.² Thus it was now

¹ *South-West Africa—Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955*, p. 67. (Transmitted to the members of the General Assembly by the Secretary-General by document A/2918).

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

clear beyond a shadow of doubt that the Assembly was acting correctly in applying the two-thirds rule in voting on South West African questions.

3. While a majority of the Members of the General Assembly had believed that adoption of the two-thirds rule on South West African matters was a correct interpretation of the Court's 1950 opinion, doubts had been expressed by other delegations on the grounds that the two-thirds rule did not correspond to the voting procedure followed under the Mandates System where the unanimity rule had applied. Yet, in its 1950 opinion (p. 138) the Court had held that the "degree of supervision to be exercised by the General Assembly should not . . . exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations". In brief, the Court considered that the "degree of supervision" related to substantive matters and not to the system of voting. Moreover, it held that in the matter of voting procedures the General Assembly could not do otherwise than follow the provisions of the Charter. To quote the 1955 opinion (p. 76-77): "When the Court stated in its previous Opinion that in exercising its supervisory functions the General Assembly should conform 'as far as possible to the procedure followed in this respect by the Council of the League of Nations', it was indicating that in the nature of things the General Assembly, operating under an instrument different from that which governed the Council of the League of Nations, would not be able to follow precisely the same procedures as were followed by the Council". The Court concluded: "There is thus no incompatibility between Rule F and the Opinion of 1950. . . ."

4. While many Members had expressed similar views the previous year it had been extremely valuable to have those views confirmed by the International Court of Justice. The Assembly could now proceed to deal with the difficult substantive problems surrounding the question of South West Africa with full confidence as to the legality of its voting procedures.

5. It only remained for the Assembly to give appropriate recognition to the Court's 1955 opinion. Such a step would be in accordance with past practice. In resolution 449 A (V) the General Assembly had accepted the Court's 1950 advisory opinion and recommended appropriate measures to give it effect. The sponsors of the draft resolution felt sure that the General Assembly would wish to take a similar step with regard to the 1955 opinion. The adoption of the draft resolution would once again make clear the importance that the General Assembly attached to proceeding with scrupulous legality in dealing with the unprecedented and difficult case of South West Africa. His delegation hoped that by so doing the Assembly would bring closer the day when the Union of South Africa would

give its full co-operation to the United Nations in the interests of the people of South West Africa.

6. Mr. KHOMAN (Thailand) said that his delegation was glad to co-sponsor the draft resolution contained in document A/C.4/L.405. The Committee was being asked to take the purely formal step of accepting and endorsing the advisory opinion of 7 June 1955 of the International Court of Justice in the same way that it had endorsed the 1950 opinion in resolution 449 A (V). For many delegations however, adoption of the draft resolution was more than a formality; it confirmed and established what his delegation, among others, had always believed to be the correct procedure for the General Assembly to apply in reaching decisions on questions concerning South West Africa. That procedure had been contested by the Union of South Africa. To reject it would have the effect, to use the words of Judge Lauterpacht in his separate opinion, of destroying "the binding character of the voting procedure of the Charter" (1955 advisory opinion, p. 109). The Court's confirmation of the General Assembly procedure greatly strengthened the position taken by the United Nations and would enable it to perform with more assurance its supervisory functions for the benefit of the people of South West Africa.

7. It was to be hoped that the Mandatory Power would heed the 1955 advisory opinion, emanating as it did from the highest international judicial authority, which not only gave a ruling on procedure, but unequivocally confirmed the competence of the United Nations to exercise supervisory functions over the administration of the Territory of South West Africa.

8. Mr. SOLE (Union of South Africa) said that his Government could not recognize or accept the 1955 advisory opinion. There were various contradictions to be found between statements in the Court's 1955 opinion and statements in its earlier opinion, but he did not propose to analyse them as they bore no relation to his Government's attitude on the matter.

9. His Government did not recognize the General Assembly's competence to exercise any supervision over the Territory of South West Africa. As the authority responsible for the administration of South West Africa, his Government was therefore not concerned as to what voting procedure was adopted in that respect by the General Assembly or as to whether it had the endorsement of the Court's opinion. For that reason South Africa had made no submission to the Court in respect of the General Assembly's 1954 request for an advisory opinion. His Government's attitude derived from the stand it had taken in relation to the original 1950 opinion, of which the 1955 opinion was merely an interpretation.

10. It had often been alleged that his Government's attitude to the 1950 opinion had been dictated purely by expediency. It was his Government's firm conviction, however, that in its original opinion the Court had genuinely erred in coming to the conclusion that at its final session in April 1946 the League of Nations had decided to transfer to the United Nations the supervisory jurisdiction which it had exercised over the administration of the two Togolands, the two Cameroons, Tanganyika, New Guinea, Western Samoa, South West Africa, Nauru and Palestine. According to the Court, the resolution adopted by the League of

Nations on 18 April 1946³ "presupposes that the supervisory functions exercised by the League would be taken over by the United Nations" (1950 advisory opinion, p. 137). His Government was convinced that that interpretation was erroneous and that the error lay in the fact that the Court had not considered the circumstances in which the resolution had been adopted.

11. Prior to the final League meeting there had been detailed consultations among the Mandatory Powers over what course should be followed in order to permit the adoption of a unanimous resolution on the future of mandates before the League was dissolved. As a result of those consultations it had been generally agreed that each of the Mandatory Powers would make a statement of its intentions regarding its mandates and that the League Assembly would be invited to take note of those statements in a resolution. No further action by the League had been contemplated. While consultations had been proceeding regarding the actual drafting of a resolution on those lines, one Member of the League had unexpectedly raised the question of the future of the mandates in a League Committee, on 9 April 1946, and had submitted a draft resolution for discussion.⁴ That draft resolution had specifically referred to the transfer to the United Nations of the functions of the League as a supervisory organ for mandated territories. Furthermore, it had recommended that the Powers administering mandated territories should submit annual reports on the territories to the United Nations and submit to United Nations inspection. There could be no doubt that that draft resolution presupposed that the supervisory functions exercised by the League would be taken over by the United Nations, but it was not the resolution finally adopted by the League. In fact it had not been discussed further, as the Chairman had ruled it out of order in relation to the item under discussion at the time.

12. Following that ruling a number of further private consultations had taken place among the Mandatory Powers and with the representatives who had put forward the draft resolution. Those consultations had been specifically directed towards achieving a resolution which would command unanimous support. It had been clear that the first draft had been unacceptable to a number of Powers, in view of its reference to the transfer of the League's functions to the United Nations. Agreement had finally been reached on a new draft resolution which had the approval of all the Mandatory Powers. The new draft had been introduced by the same representatives who had introduced the original draft and adopted unanimously.

13. The final resolution made no reference whatever to the transfer of supervisory functions to the United Nations. In operative paragraph 3 it recognized that, on the termination of the League's existence, its functions with respect to the mandated territories would come to an end, but noted that Chapters XI, XII and XIII of the United Nations Charter embodied principles corresponding to those declared in Article 22 of the League's Covenant. In paragraph 4 it took note of the expressed intention of the Members of the League administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned in accordance

³ League of Nations, *Official Journal, Special Supplement No. 194*, p. 278-279.

⁴ *Ibid.*, p. 76.

with the obligations contained in the respective mandates, until other arrangements were agreed between the United Nations and the respective Mandatory Powers.

14. The difference in wording between the original draft resolution and the resolution finally adopted was of the utmost importance. It clearly indicated the League's intentions in approving the final resolution. The very reason for the introduction and adoption of the revised resolution was to avoid a transfer to the United Nations of the League's functions in respect of mandates.

15. The circumstances attendant upon the adoption of the final League resolution, therefore, made it clear that far from presupposing a transfer to the United Nations of the supervisory functions exercised by the League in respect of mandates, the resolution of 13 April 1946 was specifically intended to avoid the transfer which had been proposed in the first draft submitted on 9 April. If such a transfer had been intended, and if any of the delegations directly concerned had had the slightest doubts on the matter, the final resolution would not have secured the unanimous vote of the League Assembly. His Government would certainly have voted against it and, he believed, it would not have received the approval of the United Kingdom, which had not yet made up its mind what should be done with the Palestine Mandate.

16. One of the fundamental difficulties in the way of any progress toward an agreed understanding on the question of South West Africa had been that over the years the whole subject had become buried under such a mass of verbiage that the salient factors in the situation had been almost totally obscured. After the outbreak of the Second World War there had been every justification, on security grounds alone, for the annexation of South West Africa to the Union of South Africa. Had that been done then, few would have questioned such action. Yet Field Marshal Smuts had refused to take that step, as he had every confidence that incorporation would be provided for in the ultimate treaty. Throughout the war the Territory had been administered in accordance with the obligations of the Mandate, except those relating to supervision by the League, which had fallen into desuetude with the inability of the machinery of League supervision to function.

17. At the San Francisco Conference in 1945, Field Marshal Smuts had given due notice to all the signatories to the Charter that the South African Government did not propose to bring South West Africa within the trusteeship provisions of the Charter, and that it was its intention at the ultimate peace settlement to seek incorporation of the Territory within the Union of South Africa. A document to that effect had been circulated to all delegations during the Conference and read to the Committee which had been considering what eventually became Chapter XII of the Charter. South Africa had subsequently signed the Charter on the understanding that no objection had been raised by any other signatory to that reservation regarding South West Africa. The following year, at the final League Assembly, South Africa had intimated its intention to formulate a case for the incorporation of South West Africa within the Union of South Africa at the following United Nations General Assembly.⁵ When, later in 1946, the United Nations had adopted

resolution 65 (I) in which it had declined to endorse South Africa's proposal, his Government had respected the United Nations standpoint; it had not proceeded with incorporation nor had it subsequently taken any step not in keeping with the spirit of the provisions of the expired Mandate, which permitted the administration of the Territory as an integral part of the Union of South Africa. On the contrary, although his Government maintained that the Mandate, as an international contractual obligation, had lapsed with the disappearance of the League, it had continued to administer the Territory in the spirit of the Mandate and in accordance with the injunctions relating to internal administration which had originally been placed on the administering Power. The records showed that his Government's policy had been consistent.

18. Notwithstanding the reservation made by South Africa at San Francisco, the General Assembly had from the outset attempted to compel the South African Government to place South West Africa under trusteeship. It had passed resolutions to that effect at every session and had continued to do so by a large majority, notwithstanding its acceptance of the Court's 1950 opinion that there was no obligation to place the Territory under trusteeship. When his Government, in a spirit of goodwill, had submitted a report on South West Africa⁶ for information only, the Assembly, again in an effort to bring South West Africa obliquely into the Trusteeship System, had refused to recognize the report as a document for information only and in resolution 141 (II), had referred it to the Trusteeship Council for examination, virtually as if it had been a report from a Trust Territory. As a result of those tactics, and because of the way in which his Government's gesture had been abused, his Government had had no alternative but to cease the transmission of reports. It had still been willing, however, to seek a compromise which would have revived the Mandate as a formal international instrument accepted by South Africa and have provided for international accountability towards the remaining Principal Allied and Associated Powers. After considerable progress had been made on many aspects of the problem, the negotiations had broken down. He believed that that was fundamentally due to the fact that the majority in the General Assembly had been determined to do everything in its power to assimilate South West Africa as closely as possible to a Trust Territory. It was abundantly clear both that the majority would not consider anything else and that no South African Government could for one moment contemplate any arrangement which would have the effect of permitting South West Africa to be progressively assimilated to the status of a Trust Territory.

19. Certain Members of the United Nations professed that South West Africa could and should be treated as a mandate. But such an arrangement could not be put into effect under the terms of the present Charter. In its 1950 opinion the Court had said (p. 140) that the "Charter has contemplated and regulated only a single system, the International Trusteeship System. It did not contemplate or regulate a co-existing Mandates System". There could be no doubt that in the absence of any Charter provision relating to the exercise of supervision over a mandate, the practical effect of attempting to treat South West

⁵ *Ibid.*, p. 32-33.

⁶ *Report by the Government of the Union of South Africa on the Administration of South West Africa for the Year 1946*, Pretoria, 1947.

Africa as a mandate would be that it would, to all intents and purposes, be treated more and more as a Trust Territory. That was already implicit in the Court's latest opinion that, because the terms of the Charter made no provision for unanimity, the two-thirds voting procedure of the Charter should be substituted for the unanimity rules of the League Council and the League Assembly.

20. Further evidence of such a departure from the concept of a mandate was the proposal that the Assembly should approve oral hearings in respect of South West Africa just as though it were a Trust Territory, notwithstanding the inadmissibility of oral hearings under the Mandates System. Those representatives who believed that a mandates system, conserving the rights of the mandatory, was workable under the terms of the Charter should review their ideas in the light of the clear evidence to the contrary. His Government had no doubts or illusions whatever on that score.

21. His delegation did not question the sincerity of delegations which asserted that a trust status or a pseudo-trust status would be in the best interests of the inhabitants of South West Africa. He hoped those delegations in turn would recognize the sincerity of his Government's conviction that such a status would not serve the best interests of the inhabitants, irrespective of race. The reasons for his Government's convictions on that point were writ large across the mass of documents which the United Nations had accumulated on the subject since 1945, and emerged equally clearly from the history of the attitude adopted by the United Nations towards South Africa in respect of other matters which were not the concern of the Fourth Committee.

22. His delegation sincerely regretted that differences on the Court's opinions and the larger issue of the right of the United Nations to exercise supervision over South West Africa should still persist. However, developments since the future of South West Africa had first been raised at the San Francisco Conference in 1945 had only served to reinforce its conviction that the recognition of the right of the United Nations to supervise the administration of South West Africa would be not only an abandonment of South Africa's legal rights, but would not help to promote the material and moral welfare of any section of the inhabitants of South West Africa.

23. Mr. BOZOVIC (Yugoslavia) said that he would vote in favour of the joint draft resolution (A/C.4/L.405). His delegation had never entertained any doubts regarding either the compatibility of the two-thirds majority rule with the 1950 advisory opinion of the International Court of Justice, or the rights and the competence of the General Assembly and the United Nations with regard to the question of South West Africa. That was why Yugoslavia had abstained in the vote on resolution 904 (IX) requesting an advisory opinion from the International Court of Justice. However, the advisory opinion rendered by the Court had confirmed the argument which the Yugoslav and other delegations maintained. The two-thirds majority rule should apply in the case of South West Africa, since the Territory should be considered as a Trust Territory.

24. The Government of the Union of South Africa denied that the General Assembly had any competence in the question of South West Africa. However, in

1946, it had requested the General Assembly's approval of its proposed annexation of the Territory.⁷ The General Assembly had adopted resolution 65 (I), refusing its approval, on the grounds that the mandated territory should become a Trust Territory. The General Assembly had thus remained consistent in its attitude; it was the attitude of the Government of South Africa which had changed.

25. Although the Yugoslav delegation had had some reservations on the Court's original advisory opinion, it would vote in favour of the draft resolution before the Committee since its own interpretation of the Charter was that the two-thirds majority rule applied to all Trust Territories.

26. Miss BROOKS (Liberia) reserved the right to explain her vote on the draft resolution at a later date.

27. Mr. RYCKMANS (Belgium) said that he would abstain from voting on the draft resolution. His delegation had pointed out during the ninth session—at the 402nd meeting of the Fourth Committee and also at the 501st plenary meeting—that the question to the International Court of Justice was badly put; consequently the advisory opinion did not settle the question on which the opinion had been asked.

28. Mr. HARARI (Israel) said that his delegation would abstain from voting on the draft resolution, in accordance with the views it had expressed during the ninth session, at the 401st meeting of the Fourth Committee and at the 494th plenary meeting. Two voting procedures were possible in respect of South West Africa. If the former mandated territory was regarded as a Trust Territory, the normal voting procedure of the General Assembly and its committees should apply. If, on the other hand, it was regarded as falling into a different category, the advisory opinion of the International Court of Justice would not solve the problem, for the two-thirds majority rule was not the same as the unanimous vote in the League of Nations. Application of a special kind of vote was not a logical solution of the problem.

29. Mr. ESKELUND (Denmark) said that the advisory opinion of the International Court of Justice on voting procedure had confirmed the view previously held by the Danish delegation. It was to be regretted that the Government of the Union of South Africa was unable to accept it. The Danish delegation would vote in favour of the draft resolution, and in so doing would also express its opinion that information on South West Africa should be forthcoming, and that the right of petition for inhabitants of South West Africa should be recognized.

30. Mr. RIVAS (Venezuela) said that at the ninth session (501st plenary meeting) his delegation had abstained on the proposal in the General Assembly (A/L.178) to ask for an advisory opinion from the International Court of Justice on the voting procedure to be adopted on questions relating to reports and petitions concerning the Territory of South West Africa, on the grounds that the request was unnecessary; the General Assembly must abide by its own voting procedure. However, the International Court of Justice had agreed with the view held by the Venezuelan delegation, which accordingly would support the draft resolution.

⁷ See *Official Records of the General Assembly, Second part of first session, Fourth Committee, Part I, fourteenth meeting; also annex 13a.*

31. The CHAIRMAN invited the Committee to vote on the draft resolution in document A/C.4/L.405.

The draft resolution was adopted by 44 votes to 1, with 4 abstentions.

32. Mr. JASPER (United Kingdom) said that it was his Government's normal policy to accept and uphold the decisions and opinions of the International Court of Justice. It did not therefore wish to oppose the Court's advisory opinion on the question of voting procedure; but on the other hand there were certain points which caused difficulty, and which his Government could not accept without considerable qualification. It had accordingly abstained in the vote on the draft resolution.

33. Mr. SOLE (Union of South Africa) said that he had already made it clear that South Africa was not concerned with the voting procedure adopted by the General Assembly. It had voted against the draft resolution because the recent advisory opinion was merely an interpretation of the original opinion, whose validity the Government of the Union of South Africa could not accept, and against which it had already voted.

(b) Report of the Committee on South West Africa (A/2913 and Add.1 and 2, A/C.4/308)

Mr. Kaisr (Czechoslovakia), Vice-Chairman, took the Chair.

34. The CHAIRMAN called upon the Chairman of the Committee on South West Africa to introduce the Committee's report (A/2913 and Add.1 and 2).

35. Mr. KHOMAN (Thailand), Chairman of the Committee on South West Africa, said that, as the Committee's report showed, all the various matters entrusted to it at the eighth and ninth sessions of the General Assembly had been dealt with during the past year, with two exceptions. The Committee had been unable to examine an annual report on the Territory because none had been submitted by the Government of South Africa. The Committee had completed its work on a procedure for the examination by the General Assembly of reports and petitions and had presented it to the Assembly at the ninth session (A/2666 and Corr.1, annex IV). That phase of the Committee's work had culminated in the request by the General Assembly in resolution 904 (IX) for an advisory opinion from the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory. That advisory opinion had just been dealt with by the Fourth Committee.

36. He wished to draw special attention to the negotiations of the Committee on South West Africa with the Government of the Union of South Africa. Paragraph 13 of resolution 749 A (VIII) had authorized the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice. Subsequently, paragraph 5 of resolution 851 (IX) had invited the Government of the Union of South Africa to co-operate with the Committee and, in particular, to submit to the Committee reports on the administration of the Territory and to assist in the examination of such reports or such information and documentation as might be available to the

Committee. At the first meeting of its second session, therefore, the Committee had renewed the invitation to the South African Government made in the previous year (A/2666, annex I (a)), and had invited that Government to designate a representative to confer with the Committee (A/2913, annex I (a)). The Committee had emphasized that it continued to entertain the earnest hope that positive results could be obtained through such further negotiations. It had also invited the South African Government to assist it in its work and, in particular, to render a report on the administration of the Territory.

37. In reply (A/2913, annex I (c)) to the Committee's overtures, the Government of the Union of South Africa had stated that its views concerning the submission of reports had been conveyed to the Committee on South West Africa in the previous year and remained unaltered. Regarding the Committee's desire to continue negotiations in order to implement fully the 1950 advisory opinion of the International Court of Justice, the South African Government had reiterated its position that the Mandate in respect of South West Africa had lapsed, and that, as a result of the demise of the League of Nations, it had no other international commitments. In order to find a solution which would remove the question from the United Nations orbit, the South African Government had offered previously to enter into an arrangement with the three remaining Principal Allied and Associated Powers. That offer had been repeatedly rejected by the United Nations on the grounds that it did not provide a means whereby the advisory opinion of the International Court of Justice could be implemented. In the circumstances, the South African Government considered that the offer too had lapsed. In conclusion, the South African Government had stated that as there had been no material change in the position, it had come to the same conclusion as in the previous year, namely, that it appeared unlikely that further negotiations would lead to any positive results.

38. In reply (A/2913, annex I (d)), the Committee on South West Africa had informed the South African Government that it could only conclude that the Union of South Africa was not prepared to assist the Committee and was unwilling even to enter into negotiations. The Committee had sincerely regretted the attitude adopted by the Government and had stated that it remained ready to negotiate, should the Government decide to revise its views.

39. The Committee's sincere efforts to enter into negotiations with the Government of the Union of South Africa in accordance with its terms of reference had thus proved unsuccessful. The Committee was bound by its terms of reference, but within those terms of reference it had extended an earnest invitation to the Government of the Union of South Africa to negotiate; that invitation was still open. It rested with the Government of the Union of South Africa to accept or reject the Committee's invitation.

40. Mr. JOUBLANC RIVAS (Mexico), Rapporteur of the Committee on South West Africa, pointed out that the report was divided into eight parts. After reviewing the contents of the various parts, he drew attention to the two draft resolutions in document A/C.4/308 which the General Assembly, at its 501st plenary meeting, on 23 November 1954, had decided not to put to the vote until the advisory opinion of the International Court of Justice had been received.

41. Addendum 2 to the Committee's report (A/2913/Add. 2), concerning the admissibility of oral hearings, mentioned the various factors which had influenced the Committee in taking its decision on the matter and he hoped that the members of the Fourth Committee would study it carefully. Briefly the situation was that the Committee on South West Africa, under its terms of reference as laid down in General Assembly resolution 749 A (VIII), was obliged to examine petitions as far as possible in accordance with the procedure of the former Mandates System. The Permanent Mandates Commission had had no provision for granting hearings, but had recognized that individual members of the Commission might hear petitioners (A/2913/Add.2, annex II). The General Assembly would now be called upon to decide whether oral hearings from petitioners relating to South West Africa were admissible, either before the Committee on South West Africa or before the Fourth Committee.

42. Section VI of the report (A/2913) dealt with the examination of information and documentation concerning South West Africa. The Committee had undertaken that task in accordance with General Assembly resolution 749 A (VIII), paragraph 12, sub-paragraphs (a) and (c). It had had before it a document of over 500 pages submitted by the Secretary-General in accordance with the Committee's rules of procedure (A/AC.73/L.7 and Add.1). In that document information and documentation relating to the situation in the Territory were presented in the form of replies to the questionnaire used by the Permanent Mandates Commission. As in the previous year, the information and documentation had been prepared almost entirely on the basis of official publications of the South African Government. The previous year's documentation had dealt with the years 1947-1953, whereas that submitted in the current year covered only 1954, except for some information relating to previous years which had not been available when the first study was being prepared. In accordance with a decision taken the previous year by the Committee on South West Africa (A/2666, annex V, para. 84), the Secretariat in the current year had included more extensive information on the question of land and land tenure. He would suggest that the members of the Fourth Committee should read document A/AC.73/L.7 and its addendum, which, taken in conjunction with document A/AC.73/L.3 and its three addenda, gave an objective and up-to-date account of the situation in South West Africa.

43. The Committee had devoted most of its time to the examination of that documentation and the preparation of its report, which was to be found in annex II of the report to the General Assembly (A/2913). The preparation of the Committee's report regarding conditions in the Territory of South West Africa had been a difficult task. The Committee had done its utmost to make the report as complete and objective as possible, but felt that if the South African Government had submitted an annual report, or had assisted it in its examination of the information before it, in accordance with General Assembly resolutions 749 A (VIII) and 851 (IX), the task would have been less arduous. Again, if the Committee had inadvertently made mistakes of fact or interpretation, a South African representative would have been able to correct them. The Committee therefore deeply regretted that it had not had the assistance of the South African Government. That Government had participated in

the discussion on the substance of the matter in the Fourth Committee the previous year, and he hoped that in future it would reconsider its attitude and co-operate with the Committee on South West Africa.

44. Mr. SOLE (Union of South Africa) said that his Government's attitude towards the second part of the agenda item under discussion had been made clear in his earlier remarks. In view of his Government's contention that the Mandate had lapsed, and in view of the circumstances in which the Committee on South West Africa had been established, it was unable to recognize the legality of the Committee, or of its report, or of the resolutions it had submitted for consideration.

45. At the previous session, without prejudice to his Government's attitude regarding the legality of the Committee, he had made more than one detailed statement on the contents of the Committee's 1954 report (A/2666, and Corr.1 and Add.1) and had drawn attention to some of the dangerous implications of the United Nations present course of action. He had dealt not only with the Committee's observations on conditions in the Territory but also with the resolutions it had drafted on the petitions received. While not questioning the spirit in which the members of the Committee had approached their task, he had drawn attention to some serious errors in the conclusions they had reached and in the motives they had ascribed to certain legislative enactments, both of the South African Government and of the South West African Administration. He had hoped that as a result of his careful explanations, there might be a better appreciation of the nature of the South African Government's task in the Territory and that some of the suspicion with which his Government's actions were regarded in certain quarters might be dispelled. That hope had, however, been doomed to disappointment.

46. In the current year the Secretariat had again prepared a detailed factual report. But the Committee, in its attempt to interpret developments in South Africa for the benefit of the General Assembly, had repeated many of its sweeping assumptions of the previous year. Both in general and in detail, many of the conclusions it had drawn, and many of the motives it had ascribed to the South African Government, were inaccurate—in some cases glaringly so.

47. The previous year he had emphasized in the Committee (407th meeting) that it was a task of the utmost difficulty for the outside observer to appreciate the very real complexity of Africa or to assess the merits and defects of any particular policy, scheme or project, and that when that was attempted at a distance of thousands of miles, by persons who had little or no experience of Africa, the task became well-nigh impossible. As an illustration he referred to the report on Tanganyika submitted by the United Nations Visiting Mission to Trust Territories in East Africa, 1954 (T/1142). Some of the conclusions in that report, adopted by the majority of the Visiting Mission, were not only inaccurate but, in the opinion of qualified experts, almost dangerously so. Yet the members of the Mission had had the advantage of a personal visit to the Territory in question. It was hardly surprising that the members of the Committee on South West Africa, sitting in New York, having no first-hand knowledge of the Territory, should similarly have reached erroneous conclusions regarding policies being applied in the Territory of South West Africa.

41. Addendum 2 to the Committee's report (A/2913/Add. 2), concerning the admissibility of oral hearings, mentioned the various factors which had influenced the Committee in taking its decision on the matter and he hoped that the members of the Fourth Committee would study it carefully. Briefly the situation was that the Committee on South West Africa, under its terms of reference as laid down in General Assembly resolution 749 A (VIII), was obliged to examine petitions as far as possible in accordance with the procedure of the former Mandates System. The Permanent Mandates Commission had had no provision for granting hearings, but had recognized that individual members of the Commission might hear petitioners (A/2913/Add.2, annex II). The General Assembly would now be called upon to decide whether oral hearings from petitioners relating to South West Africa were admissible, either before the Committee on South West Africa or before the Fourth Committee.

42. Section VI of the report (A/2913) dealt with the examination of information and documentation concerning South West Africa. The Committee had undertaken that task in accordance with General Assembly resolution 749 A (VIII), paragraph 12, sub-paragraphs (a) and (c). It had had before it a document of over 500 pages submitted by the Secretary-General in accordance with the Committee's rules of procedure (A/AC.73/L.7 and Add.1). In that document information and documentation relating to the situation in the Territory were presented in the form of replies to the questionnaire used by the Permanent Mandates Commission. As in the previous year, the information and documentation had been prepared almost entirely on the basis of official publications of the South African Government. The previous year's documentation had dealt with the years 1947-1953, whereas that submitted in the current year covered only 1954, except for some information relating to previous years which had not been available when the first study was being prepared. In accordance with a decision taken the previous year by the Committee on South West Africa (A/2666, annex V, para. 84), the Secretariat in the current year had included more extensive information on the question of land and land tenure. He would suggest that the members of the Fourth Committee should read document A/AC.73/L.7 and its addendum, which, taken in conjunction with document A/AC.73/L.3 and its three addenda, gave an objective and up-to-date account of the situation in South West Africa.

43. The Committee had devoted most of its time to the examination of that documentation and the preparation of its report, which was to be found in annex II of the report to the General Assembly (A/2913). The preparation of the Committee's report regarding conditions in the Territory of South West Africa had been a difficult task. The Committee had done its utmost to make the report as complete and objective as possible, but felt that if the South African Government had submitted an annual report, or had assisted it in its examination of the information before it, in accordance with General Assembly resolutions 749 A (VIII) and 851 (IX), the task would have been less arduous. Again, if the Committee had inadvertently made mistakes of fact or interpretation, a South African representative would have been able to correct them. The Committee therefore deeply regretted that it had not had the assistance of the South African Government. That Government had participated in

the discussion on the substance of the matter in the Fourth Committee the previous year, and he hoped that in future it would reconsider its attitude and co-operate with the Committee on South West Africa.

44. Mr. SOLE (Union of South Africa) said that his Government's attitude towards the second part of the agenda item under discussion had been made clear in his earlier remarks. In view of his Government's contention that the Mandate had lapsed, and in view of the circumstances in which the Committee on South West Africa had been established, it was unable to recognize the legality of the Committee, or of its report, or of the resolutions it had submitted for consideration.

45. At the previous session, without prejudice to his Government's attitude regarding the legality of the Committee, he had made more than one detailed statement on the contents of the Committee's 1954 report (A/2666, and Corr.1 and Add.1) and had drawn attention to some of the dangerous implications of the United Nations present course of action. He had dealt not only with the Committee's observations on conditions in the Territory but also with the resolutions it had drafted on the petitions received. While not questioning the spirit in which the members of the Committee had approached their task, he had drawn attention to some serious errors in the conclusions they had reached and in the motives they had ascribed to certain legislative enactments, both of the South African Government and of the South West African Administration. He had hoped that as a result of his careful explanations, there might be a better appreciation of the nature of the South African Government's task in the Territory and that some of the suspicion with which his Government's actions were regarded in certain quarters might be dispelled. That hope had, however, been doomed to disappointment.

46. In the current year the Secretariat had again prepared a detailed factual report. But the Committee, in its attempt to interpret developments in South Africa for the benefit of the General Assembly, had repeated many of its sweeping assumptions of the previous year. Both in general and in detail, many of the conclusions it had drawn, and many of the motives it had ascribed to the South African Government, were inaccurate—in some cases glaringly so.

47. The previous year he had emphasized in the Committee (407th meeting) that it was a task of the utmost difficulty for the outside observer to appreciate the very real complexity of Africa or to assess the merits and defects of any particular policy, scheme or project, and that when that was attempted at a distance of thousands of miles, by persons who had little or no experience of Africa, the task became well-nigh impossible. As an illustration he referred to the report on Tanganyika submitted by the United Nations Visiting Mission to Trust Territories in East Africa, 1954 (T/1142). Some of the conclusions in that report, adopted by the majority of the Visiting Mission, were not only inaccurate but, in the opinion of qualified experts, almost dangerously so. Yet the members of the Mission had had the advantage of a personal visit to the Territory in question. It was hardly surprising that the members of the Committee on South West Africa, sitting in New York, having no first-hand knowledge of the Territory, should similarly have reached erroneous conclusions regarding policies being applied in the Territory of South West Africa.

48. He would not attempt to explain where the Committee had erred in its conclusions, since the experience of the previous year had shown that to do so would produce no fruitful result. Nor would he comment on the inaccuracies and even untruths contained in the petitions considered by the South West Africa Committee. At the ninth session (425th meeting), without prejudice to his Government's standpoint on petitions, he had endeavoured to arouse the Fourth Committee to the serious implications involved in the adoption of the draft resolutions on petitions suggested by the Committee on South West Africa (A/2666 and Corr.1, annex VI (c); A/2666/Add.1, annex III (b)). His statement, however, had not been discussed at all; the draft resolutions had simply been voted on without any examination of their contents and referred to the General Assembly. He would not, therefore, deal with the contents of the petitions presented to the Committee on South West Africa or with the terms of the draft resolutions now submitted by that Committee to the Fourth Committee (A/2913, annexes VI (d), VII (d) and VIII (e)). He would merely repeat that South Africa recognized no right of petition to the United Nations in respect of South West Africa and regarded the procedures established by the Committee on South West Africa and the General Assembly for dealing with petitions as illegal.

49. Nor would he say much on the subject of negotiations with the Committee on South West Africa. The previous year he had emphasized in the Fourth Committee that when the General Assembly had established the Committee on South West Africa in 1953 it had given that Committee no powers of negotiation whatsoever except on the General Assembly's own terms. The South African Government had merely been invited to co-operate with the Committee on a basis that had been defined unilaterally by the General Assembly. Clearly South Africa could not accept an arrangement which had been decided upon against its wishes and which failed to take into account any of its basic requirements.

50. In the light of that statement the members of the Committee on South West Africa could not have been surprised to receive the South African Government's letter of 21 May 1955 (A/2913, annex I (c)) stating that the South African Government could not see that further negotiations would lead to any positive results. Nor could it have been a surprise that, in view of the repeated rejection by the United Nations of South Africa's offer to enter into an arrangement with the three remaining Principal Allied and Associated Powers, that offer was stated to have now elapsed.

51. He drew attention to paragraph 33 of the Committee's report on conditions in the Territory (A/2913, annex II), dealing with the so-called legal aspects of the question of South West Africa, which was presumably intended to stimulate a further request to the International Court for an advisory opinion. It was the impression of the South African delegation that the inclusion of paragraph 33 derived from the allegation frequently heard in the Fourth Committee that South West Africa had been incorporated into the Union of South Africa, and that proof of such incorporation was to be found in the terms of the South West Africa Affairs Amendment Act, 1949. That allegation had been fully rebutted many times in the past by South African representatives in the

Fourth Committee. Nevertheless, since the question had arisen again and there was a specific suggestion that the General Assembly should examine the advisability of clarifying the legal aspects, he would recall that the right of South West Africa to be represented in the Parliament of the Union of South Africa had been accepted as long ago as 1920. On 17 September 1920, speaking at Windhoek, capital of the Territory, Field Marshal Smuts had explained the nature of the authority which the South African Government had competence to exercise over South West Africa under the Treaty of Versailles. He had specifically said that the Union of South Africa could give the Territory parliamentary representation. He had made that statement only a short time after his return from the Peace Conference, and must therefore have had clearly in mind the rights which the statesmen at Versailles had agreed should be conferred on the Union of South Africa in that respect.

52. In the same year, 1920, a Government commission had been appointed to examine the question of South West Africa's form of government or administration. That commission recommended, *inter alia*, that the population should be given full representation in the Union parliament. The recommendation had not been adopted by the South African Government at the time, since the conditions prevailing in the Territory had made it necessary to continue in a modified form the direct administration by the South African Government which had been established following the conquest of the Territory. In later years too, the Government had come to the conclusion that the grant of representation in the South African Parliament should not be proceeded with in view of the special circumstances in the political situation in the Territory.

53. During the parliamentary session of 1947 a resolution had been adopted by the Parliament of the Union of South Africa which, *inter alia*, expressed their opinion that the Territory of South West Africa should be directly represented in the Union Parliament. That resolution had been brought to the notice of the United Nations in a letter dated 23 July 1947 from the South African Minister in Washington (A/334), in which the United Nations had been informed that steps would be taken to carry out the consultation with the inhabitants of the Territory envisaged in terms of the parliamentary resolution, with a view to the introduction of the necessary legislation.

54. At the General Assembly's second session, in 1947, the question of representation for the Territory in the Parliament of the Union of South Africa had been referred to by several delegates. The leader of the South African delegation, after referring to the fact that under the Mandate such representation could clearly have been granted without violating its provisions, had stated explicitly at the 105th plenary meeting that the representation would not entail incorporation of the Territory into the Union.

55. At the following session Mr. Louw, the present South African Minister of External Affairs, had made a full statement to the Fourth Committee (76th meeting) outlining the legislation contemplated and the nature of the representation which would be accorded to South West Africa. After hearing that statement the General Assembly, on 26 November 1948, had adopted resolution 227 (III) taking note of the assurance given by the representative of the Union of

South Africa that the proposed new arrangement did not mean incorporation and would not mean absorption of the Territory by the Administering Authority.

56. In July 1949 the South African Government had officially communicated to the United Nations all relevant particulars on the legislation subsequently enacted in the Union Parliament (A/929). At the fourth session of the General Assembly in 1949, the South African representative had given the Fourth Committee, at its 130th meeting, a further detailed explanation of the workings and the intentions of the Act in question and there had been a full discussion of the legislation. One delegation had introduced a proposal (A/C.4/L.61) to the effect that the General Assembly should note that "the measures taken by the Union of South Africa in adopting a law for the association of South West Africa with the Union of South Africa constitute a violation of the United Nations Charter". That proposal had, however, been rejected. In other words the General Assembly had decided that there was no justification for the charge that adoption of the legislation in any way violated South Africa's obligations as conceived by the General Assembly.

57. Since the fifth session in 1950, the charge that South West Africa had been incorporated had been repeated at almost every session. It had come mainly from the countries falling within the orbit of the Soviet Union, but others had lent credence to it. Every year his delegation had denied the charge, and he would once more formally state that there had been no incorporation of South West Africa within the Union of South Africa and that the grant of representation to South West Africa within the Union Parliament was fully in accordance with the spirit of the expired Mandate.

58. Under the terms of article 2 of the Mandate, South Africa had full power of legislation as well as of administration and might apply the laws of the Union of South Africa to the Territory subject to such local modifications as circumstances might require. There could therefore be no doubt that the Union of South Africa could also apply to South West Africa laws of the Union relating to representation in Parliament, subject to local modifications. Although the Mandate had lapsed, that had in fact been done in the legislation providing for representation of the Territory in the Parliament of the Union of South Africa. That legislation provided, *inter alia*, that a number of important spheres of government, such as for example taxation and mining, were under the control of the South West Africa Legislative Assembly and not of the South African Government.

In fact the local legislature now enjoyed considerably greater authority than it had done under the former Mandate, and more than did the provincial council in any of the constituent provinces of the Union.

59. In view of the background to the present representation of South West Africa in the Parliament of the Union of South Africa, his delegation was at a loss to understand the doubts that seemed to have arisen in the minds of some members of the Committee on South West Africa as to the legality of such representation.

60. He recalled that representation of a non-metropolitan territory in the parliament of another State or Territory was not confined to South West Africa. For example, the Trust Territories of Togoland and the Cameroons under French administration, in addition to possessing their own Territorial Assemblies, were also represented in Paris. So far as he was aware, no formal objection had at any time been raised by the General Assembly to the principle of representation of a Trust Territory in the parliament of the Administering Authority. How much less, therefore, could objection be raised to such representation in respect of a Territory which the majority of the General Assembly regarded as a mandate. Furthermore, although the case was not quite analogous, reference could be made to the representation in the Gold Coast Parliament of the Trust Territory of Togoland under British administration and to similar representation in the Nigerian Parliament of the Trust Territory of the Cameroons under British administration.

61. In none of the cases he had mentioned could it legitimately be argued that the representation accorded was a departure either from the letter or from the spirit of the relevant Trusteeship Agreements. How, therefore, could it be argued that representation of South West Africa in the Parliament of the Union of South Africa was a departure from either the letter or the spirit of the expired Mandate? It was the conviction of the South African Government that representation of South West Africa in the Union Parliament was fully in keeping with the spirit of the Mandate.

62. He trusted that what he had said would remove any vestige of doubt as to the legality of South West Africa's representation in the Union Parliament, whether the basic assumption were that the Mandate had lapsed, as contended by the South African Government, or that it was still in existence, as contended by the majority in the General Assembly.

The meeting rose at 12.50 p.m.