



C O N T E N T S

	<i>Page</i>
Question of South West Africa: report of the <i>Ad Hoc</i> Committee on South West Africa (<i>continued</i>).....	285
Draft report of the Fourth Committee on agenda items 32, 33 and 34 (<i>continued</i>).....	291

Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

Question of South West Africa: report of the *Ad Hoc* Committee on South West Africa (A/2475 and Add.1 and 2, A/C.4/L.305/Rev.1, A/C.4/L.306 and Add.1) (*continued*)

[Item 36]*

1. Mr. SHTOKALO (Ukrainian Soviet Socialist Republics) noted that in 1946 the South African Government had refused to conclude a trusteeship agreement for South West Africa with the United Nations, that it had failed to comply with the various General Assembly resolutions on the subject and that in 1949 it had adopted the South West Africa Affairs Amendment Act, whereby South West Africa had become a province of the Union, an Act which was clearly contrary to the United Nations Charter. As a result of the change in the status of the territory, the South African Government had informed the United Nations of its intention not to submit any further information on South West Africa (A/929). Neither the advisory opinion of the International Court of Justice¹ nor the General Assembly resolutions had had any effect on the South African Government.

2. After briefly reviewing the establishment of the *Ad Hoc* Committee on South West Africa, its terms of reference and the events leading up to the report now before the Committee A/2475 and Add. 1 and 2), he noted that the *Ad Hoc* Committee had received a number of petitions and other documents from sources in South West Africa and elsewhere, which had been forwarded to the South African Government and included in the report to the General Assembly. The South African Government, however, had consistently refused to consider such communications on the grounds that no basic agreement had been reached on the larger questions involved.

3. The prolonged negotiations between the South African representative and the *Ad Hoc* Committee had failed to solve the problem. The South African Government's proposal (A/1901, paras. 11 to 25) did not provide the means for implementing the advisory opinion of the International Court of Justice and did not recog-

nize the principle of supervision by the United Nations. The South African Government had maintained that its responsibilities in regard to South West Africa should not in any way exceed those which it had assumed under the Mandate and that it was prepared to conclude a trusteeship agreement only with the United States, the United Kingdom and France. The stand taken by the South African Government had resulted in the indefinite postponement of any solution and the territory remained illegally annexed to the Union of South Africa. Such an illegal situation in contradiction to the Charter could be tolerated no longer.

4. The South African Government continued to apply a policy of racial discrimination against the indigenous inhabitants, or approximately 90 per cent of the population, who were deprived of their elementary political rights and represented only by persons of European origin. After noting the harsh treatment meted out to the indigenous population under the recently adopted Public Safety Act and the Criminal Law Amendment Act, he turned to the economic field and pointed out that the European tenth of the population owned over half the land. When reports on the territory had still been available, the Trusteeship Council had noted that the expenditure on the indigenous 90 per cent of the population amounted to only 10 per cent of the budget and that the confinement of the indigenous population to reserves did not contribute to the general progress of the country and was to be deplored in principle (A/603, p. 43 and 44). Many of the petitions received by the *Ad Hoc* Committee had included the request that the United Nations should set up an impartial commission to study the living conditions of the indigenous population on the spot.

5. To distract world public opinion from the deplorable plight of the indigenous population of South West Africa, which had arisen from South Africa's refusal to fulfil its Charter obligations, the South African Government was trying to reduce the question to one of interpretation of the Charter and various legal points.

6. South West Africa must be brought under the International Trusteeship System of the United Nations. That was the only correct solution in harmony with the provisions of the Charter and the interests of the indigenous population.

7. Mr. LANNUNG (Denmark) commended the *Ad Hoc* Committee for its persistent efforts to seek a basis of agreement between the United Nations and the South African Government within the framework of the International Court's advisory opinion. His delegation had accepted that advisory opinion with satisfaction and still believed that it should be adhered to by all Members of the United Nations. As the General Assembly had stated in resolution 570 A (VI), acceptance of the advisory opinion was essential to the rule of law and reason in international affairs and would strengthen the cause of the United Nations. Furthermore an agreed solution of the question of South West

* Indicates the item number on the agenda of the General Assembly.

¹ See *International Status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.*

Africa would bring greater peace and harmony to the continent of Africa.

8. Together with a number of other delegations, his delegation had co-sponsored the draft resolution contained in document A/C.4/L.305/Rev.1, which reaffirmed the United Nations position on South West Africa. The negotiations which the *Ad Hoc* Committee had so diligently conducted for the last three years had not persuaded the South African Government to implement the International Court's opinion. Consequently, while negotiations should, if at all possible, be continued with the Union of South Africa, the United Nations should take a further step to implement the Court's opinion by assuming as much of the international supervision formerly exercised by the League of Nations as was practical in existing conditions. He was fully aware that as long as there was no agreement on the machinery to be established for the supervision of South West Africa, any attempt by the United Nations to provide for such supervision must of necessity be incomplete. At the same time, the sponsors of the draft resolution were firmly convinced that it constituted a new and constructive approach to a vexed and complex question. They were aware that an examination of conditions in the territory could be undertaken fully only if the proposed new committee obtained the co-operation of the Union of South Africa. They very sincerely hoped that the South African Government would find it possible to co-operate with the committee in every possible way.

9. He drew attention to the terms of paragraph 12 (a) of the draft resolution. The decision to establish the new committee had been partly inspired by a sentence in a letter from the South African representative to the Chairman of the *Ad Hoc* Committee on 20 September 1951 (A/1901, para. 32). In that letter the South African Government had rejected the invitation to submit reports on South West Africa, but had stated that there was always available essential information on the territory in the form of statistics, departmental reports, records of the South African legislature, Blue Books and other governmental papers. The letter could be construed as giving the United Nations a reasonable basis for availing itself of such material. He sincerely hoped that that material—which would include the rules and regulations of the territory which had been submitted under the Mandate—would be the basis on which the new committee would conduct its business.

10. It went without saying that since the United Nations had accepted the advisory opinion of the International Court, it must at all times bear in mind the pronouncement that in dealing with questions affecting South West Africa it should be guided by the rules which had applied to the Mandates System in the League of Nations. That attitude had been expressly stated in all the relevant paragraphs of the draft resolution. It would be wrong for the United Nations to overstep its authority in that regard, and he hoped that the new committee would feel formally bound by the Court's decision, *in toto*.

11. No resolution could accurately reflect the many different opinions prevailing in the Fourth Committee. In a spirit of compromise and co-operation, a common denominator had been found which in a moderate but constructive form could contribute substantially towards a solution of the question of South West Africa. He hoped that an overwhelming number of the members of the Committee would disregard individual wishes

of minor importance and be willing to support the draft resolution in order to give the greatest possible force to the efforts of the United Nations.

12. Mr. LAWRENCE (Liberia) did not intend to refer to matters which could be discussed more appropriately in another committee, but the question of a territory under South African administration could hardly be discussed without referring to the policy of segregation, dehumanization, dispossession and exploitation which South Africa adopted in its relations with the non-Europeans who unhappily found themselves under its jurisdiction. The United Nations was naturally deeply concerned at the way Africans, who formed nine-tenths of the population of South West Africa, were faring as the "sacred trust"—quote Article 22 of the Covenant of the League of Nations—of the Union of South Africa. The report of the *Ad Hoc* Committee provided ample evidence of the way in which the relationships prevailing between Europeans and non-Europeans in South Africa had been imported into the territory so that one of the most fundamental rights of man, namely, the right to petition, had been denied the non-Europeans by the administering Power.

13. He had been surprised to hear that approximately 90 per cent of the population of South West Africa had supported the annexation of their territory by the Union of South Africa. It was inconceivable that the Africans, who formed eight- or nine-tenths of the population, should knowingly have voted to perpetuate their lot in even closer affiliation with the Union of South Africa. Perhaps the South African representative had wished the Committee to understand that 90 per cent of the European population had voted for annexation.

14. At the 357th meeting, the South African representative had referred to his Government's role in administering the territory as one of onerous responsibilities. Nevertheless, despite the expressed wishes of the people of South West Africa, the South African Government was doing everything possible to annex the territory. It would therefore seem that, far from becoming a burden, the "sacred trust" was being regarded as a valuable possession.

15. The South African representative had argued that since the League of Nations, from which the Mandate derived, had ceased to exist, his Government was responsible to no one, not even the peoples of South West Africa, for the administration of the "sacred trust". After much discussion, however, the South African Government had agreed to assume further responsibilities for the administration of the territory with accountability to the United States, the United Kingdom and France, but not to the United Nations. That position was hard to understand, particularly when the three Powers in question had themselves entered into trusteeship agreements with the United Nations for all the territories which they had administered as mandates under the League of Nations. Every Member of the United Nations had an interest in the welfare of the dependent peoples of the world, and his delegation would not be willing to delegate that interest. He agreed with the Indian representative that if the Mandate for South West Africa had ceased with the demise of the League of Nations, it was logical to argue that South Africa's administration of the territory had done so too.

16. His delegation would vote in favour of the draft resolutions contained in documents A/C.4/L.305/

Rev.1 and A/C.4/L.306 and Add.1. He hoped that the South African Government would endeavour to revise its point of view so that some understanding acceptable to all the parties concerned could eventually be reached.

17. Mr. MARAMIS (Indonesia) said that the excellent analysis of the question of South West Africa by the Indian representative at the 359th meeting made it unnecessary for him to go over the same ground. The endeavours of the *Ad Hoc* Committee for three successive years to reach an agreement with the Government of the Union of South Africa on means of implementing the advisory opinion of the International Court of Justice had ended in failure. In 1951, that government, after putting forward a proposal including the negotiation of an agreement with the remaining Principal Allied and Associated Powers—a proposal which would hardly be acceptable to the General Assembly—had rejected the *Ad Hoc* Committee's counter-proposal (A/1901, para. 27), the principal feature of which was that implementation of the agreement would be carried out by the United Nations by a procedure as similar as possible to that which had existed under the League of Nations, so that the South African Government's obligations would be greater or heavier than they had been in the past. Furthermore, the *Ad Hoc* Committee had been unable to comply with the General Assembly's instructions to examine South Africa's report on the administration of the Territory of South West Africa covering the period since the preceding report, because no report had been submitted.

18. As could be seen from the 1952 and 1953 *Ad Hoc* Committee's reports (A/2261 and Add.1, A/2475 and Add.1 and 2), no progress had been made during the two preceding years as regards the substance of the problem. The Union of South Africa had maintained its original position, save that it had offered to submit information annually to the three Powers with which it was prepared to negotiate an agreement, thus making it clear that it wished to exclude the United Nations even where the submission of information was concerned.

19. That the negotiations had failed was not the fault of the *Ad Hoc* Committee, which was to be commended for its persistent efforts. The South African Government uncompromisingly maintained that supervision of the administration of South West Africa by the United Nations would impose on it greater obligations than it had assumed under the Mandates System. It had also refused to accept as a basis for discussion, the *Ad Hoc* Committee's counter-proposal which would not have added to the burden of those obligations while offering to the people of South West Africa guarantees similar to those they had enjoyed under the Mandates System. While the *Ad Hoc* Committee and the South African representative had reached agreement in principle on a few minor points (A/2261, para. 23), they had failed to agree on the two major principles: supervision by the United Nations of the administration of South West Africa, and conclusion of an agreement with the United Nations or with an agency responsible to it. Thus the basic divergences which had precluded a solution in 1951 still persisted.

20. In view of the fact that the administration of South West Africa was a problem of international concern and in view, also, of the General Assembly's commendable patience and restraint in the matter, he

had been surprised to hear the South African representative repeat that what he termed the insistence of the United Nations on interfering in the internal affairs of the Union of South Africa and the lack of impartiality and understanding with which South African problems were viewed by some Members were having a grave effect on public opinion in the Union vis-à-vis the United Nations.

21. A solution of the question could not be found without the co-operation of the South African Government; yet a solution was needed not only in the interests of the inhabitants of South West Africa, but in the interests of peace and harmony in Africa and in the world. He would, therefore, support the two draft resolutions before the Committee (A/C.4/L.305/Rev.1, A/C.4/L.306 and Add.1). The first of those texts provided for the establishment of a committee which, in addition to examining information, reports and petitions, would continue negotiations with the Union of South Africa in the hope of persuading that country to accept the Court's advisory opinion, an outcome which would not only be a satisfactory settlement of an international question but which would enhance the prestige of the Union of South Africa in the eyes of the world. The unanimous adoption of the draft resolution would influence the attitude of the South African Government. The draft resolution contained in document A/C.4/L.306 and Add.1 being a reaffirmation of previous General Assembly resolutions, did not require comment, and he would merely urge the Committee to adopt it.

22. Mr. ITANI (Lebanon) noted that the negotiations between the *Ad Hoc* Committee and the South African representatives had not yet brought about any solution or any agreement on the procedure for implementing the advisory opinion of the International Court of Justice.

23. In 1952, agreement had been reached, in principle, on the following points: first, that a new instrument, replacing the former Mandate, should be concluded; secondly, that the new instrument should revive the "sacred trust" contained in articles 2 to 5 of the Mandate; thirdly, that, under certain conditions, the South African Government would make available information on its administration of South West Africa; lastly, that there should be some form of international supervision of South Africa's administration of South West Africa. Fundamental differences still remained on how that supervision should be carried out and who the second party to the agreement should be.

24. He deeply regretted that despite the gravity of the problem it had not yet proved possible to reconcile those divergencies. He also regretted that the South African Government had not submitted any reports on its administration of South West Africa to the *Ad Hoc* Committee and that, despite the recommendations of the General Assembly, it still refused to comment on the petitions which the Committee forwarded to it.

25. His delegation fully supported the *Ad Hoc* Committee's conclusions. In any negotiations with the South African Government, the United Nations should refrain, as a matter of principle, from examining any proposal which did not provide for United Nations supervision over the administration of the territory, as provided for in the Court's advisory opinion. Furthermore, the negotiation of any new international instrument should be undertaken exclusively by the United Nations or by a body appointed by and responsible to

it. The Committee should abide by its terms of reference and continue to try to find some procedure for implementing the International Court's opinion. Since the General Assembly had accepted that opinion in resolution 449 A (V), to by-pass it now would set a very grave precedent in international relations. The *Ad Hoc* Committee was quite correct in taking into account that part of the Court's opinion which said 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" (p. 138).

26. His delegation's position with regard to any draft resolutions and amendments would be determined in the light of the considerations that he had just outlined. He congratulated the *Ad Hoc* Committee on its praiseworthy and patient efforts to reach agreement and hoped that the South African Government would find it possible to help the United Nations to find a solution to the South West African question in conformity with the Charter.

27. Mr. KAISER (Czechoslovakia) mentioned the following incontrovertible facts: South West Africa was the only mandated territory in the world which had not become either an independent State or a Trust Territory; it alone, although administered by a Member State, was not subject to United Nations supervision; it was so administered against the will of its population and in disregard of the Charter and of several General Assembly resolutions; owing to the manoeuvres of the South African Government, the General Assembly had, in seven years of effort, failed to bring about a satisfactory solution of the problem; the South African Government openly flouted the authority of the International Court of Justice; its final aim was the annexation of South West Africa and it was waiting for an opportune moment to present the United Nations with a *fait accompli*; lastly, the political, economic and social position of the territory's population was becoming steadily worse as a result of the South African Government's policy of racial discrimination against, and enslavement of, the indigenous inhabitants.

28. Numerous communications and petitions from that population, which were appended to the *Ad Hoc* Committee's report (A/2475 and Add. 1 and 2), left no doubt of its resistance to that policy and of its faith in the United Nations and in the General Assembly's resolutions. The Fourth Committee must heed those appeals and demonstrate that it could defend the rights and freedoms of non-self-governing peoples.

29. Although the Union of South Africa had signed and ratified the Charter, it was unwilling to abide by the obligations it had thus assumed, and was indeed steering a course in the opposite direction. Its policy of racial discrimination had been commented upon in the United States Press. The people of South West Africa were protesting bitterly against being doomed to live and die under an unending imprisonment. Corporal punishment had been reintroduced in South West Africa under the Criminal Law Amendment Act, and there was no legal procedure within the framework of South African law for challenging the constitutionality of that Act or of the Public Safety Act, another openly discriminatory law recently adopted. As a result of elections to the Parliament held in the course of the

year, the indigenous inhabitants of South West Africa were virtually unrepresented in that organ.

30. The replacement of the Mandates System by the International Trusteeship System had been one of the primary purposes of the United Nations at San Francisco and the South African Government had been well aware of that fact. Under Chapter XII of the Charter, Member States had been given the choice between granting independence to their mandated territories and altering their status to that of Trust Territories, and all had complied, with the sole exception of the Union of South Africa. In 1946, the General Assembly, in its resolution 65 (I), had invited that country's Government to propose a trusteeship agreement for the mandated territory of South West Africa, an invitation which had since been repeated—and ignored—year after year, to the point of exhausting the patience of the United Nations.

31. Having always defended the principle of supervision by the United Nations of the administration of South West Africa, his delegation was quite unable to accept the South African Government's proposal to have such supervision exercised by three Powers—a proposal contrary not only to the Charter and the many resolutions adopted on the subject by the General Assembly, but to the clearly expressed wishes of the territory's people. The wishes and interests of those people were paramount, as the South African Government would sooner or later have to realize. The Court, in its advisory opinion, had stated that international supervision should be exercised by the United Nations, and the form that supervision should take was stipulated in Chapter XII of the Charter. His delegation, faithful to the Charter and desirous of defending the interests of non-self-governing peoples, would support any draft resolutions directed at placing the administration of the territory under the supervision of the United Nations.

32. Mr. INGLES (Philippines) wished to analyse the situation confronting the United Nations in regard to South West Africa in order to determine whether its previous proceedings had been in the right direction, or whether there might not be other ways and means of enforcing the international obligations which the Union of South Africa had assumed with respect to that territory. It was clear that no agreement could be reached unless the Union of South Africa accepted the principle of United Nations supervision, which the Indian delegation had represented as the very core of the Court's advisory opinion. There could be no negotiations to implement the advisory opinion if one of the parties refused to accept the basic principles envisaged in it.

33. Under the terms of General Assembly resolution 449 A (V), the *Ad Hoc* Committee on South West Africa had been limited to conducting negotiations on procedural measures to enforce South Africa's obligations under the Mandate, but under the broader terms of reference laid down in General Assembly resolutions 570 (VI) and 651 (VII), it was also empowered to negotiate a trusteeship agreement to replace the League of Nations Mandate. It had been that part of its terms of reference which the *Ad Hoc* Committee had had in mind when it had agreed in principle to the proposal of the Union of South Africa in 1952 that a new instrument should be concluded, replacing the Mandate for South West Africa. When South Africa had made more detailed suggestions for the proposed new instrument, the *Ad Hoc* Committee had been unable to agree to it.

34. The principles established in the Court's advisory opinion were not susceptible to compromise and must be adhered to if the *Ad Hoc* Committee, or any committee which might be established to continue negotiations, was to be faithful to its terms of reference. The South African Government must be made to understand that just as the Union of South Africa rejected any extension of its obligations under the Mandate, which would in any case be contrary to the opinion of the Court, so the United Nations rejected any attempt to diminish the functions of supervision over the administration of the Territory of South West Africa which the Court had recognized that it was heir to. In its proposed to the *Ad Hoc* Committee, the Union of South Africa had emphasized the point that it was willing to agree in advance to the compulsory jurisdiction of the International Court of Justice, if a new agreement was concluded along the lines it had proposed. According to the advisory opinion of the International Court, however, any Member of the League of Nations was entitled under article 7 of the Mandate to bring the Mandatory Power compulsorily before the Permanent Court of International Justice. The compulsory jurisdiction had been preserved in Article 37 of the Statute of the International Court of Justice. The South African proposal would limit the initiation of proceedings under the compulsory jurisdiction clause to the three Principal Allied and Associated Powers. The *Ad Hoc* Committee had been unable to agree to that formula, which would diminish the compulsory jurisdiction of the International Court of Justice, and the Philippine delegation whole-heartedly endorsed that stand.

35. The only obstacle to the successful negotiation of an agreement between the *Ad Hoc* Committee and the Union of South Africa was the latter's refusal to negotiate on the basis of the advisory opinion. Although it agreed with that part of the Court's opinion which stated that United Nations supervision should not exceed supervision under the Mandates System, it contended that the acceptance of United Nations supervision would in itself constitute the imposition of obligations more onerous than those which had obtained under the Mandate. That contention contradicted the Court's opinion that the United Nations had succeeded to the supervisory functions formerly exercised by the League of Nations, and that it could exercise such supervision without exceeding that which had applied under the Mandates System.

36. The United Nations was thus in an impasse: it could hardly continue year after year to pass the same resolutions calling for further negotiations with the Union of South Africa. Although a reiteration of previous resolutions would be of value in reaffirming the General Assembly's principles, further steps would have to be taken, if anything concrete was to be accomplished. A vote of censure would afford no real solution and would merely cause strained relations to deteriorate still further. It must not be forgotten that a third party was involved, namely, the people of the territory of South West Africa, in whose interest the Mandate had been established in the first place, and whom the United Nations was bound to protect. South Africa's insistence on minimizing its obligations under the Mandate as much as possible tended to obscure the real issue, which was how to give effect to the right of the people of South West Africa to be administered in accordance with the Mandate.

37. In its advisory opinion, one of the principles on which the Court had been unanimous was the continuation of the judicial machinery for supervising the administration of the mandated territory of South West Africa. Under article 7 of the Mandate, the Mandatory Power had agreed that if any dispute whatever should arise between it and another Member of the League of Nations regarding the interpretation or application of the terms of the Mandate, such dispute, if it could not be settled by negotiation or application, would be submitted to the Permanent Court of International Justice. Thus, any Member of the League of Nations could bring the Union of South Africa before the Court in order to enforce its obligations under the Mandate. Although any former Member of the League could do so on its own initiative, it would be more in keeping with the new world order if such a step were to be taken upon the recommendation of the United Nations. The Philippine delegation considered that a clear case could be made against South Africa for its persistent refusal to submit annual reports to the United Nations on its administration of the territory of South West Africa and to transmit petitions from the inhabitants of that territory. The advisory opinion of the International Court of Justice had stated categorically that it should submit reports and transmit petitions to the United Nations, but even before 1950, when the Court's advisory opinion had been accepted by the General Assembly, the Union of South Africa had ceased to do so. It followed that it had failed to fulfil its obligations under the Mandate. Since the Court had adopted its opinion by a vote of 12 votes to 2, it was unlikely that it would reverse its decision if the question was brought up again under the compulsory jurisdiction clause of Article 37 of its Statute. Moreover, a decision in such a case would be binding on the parties and should any party to the dispute fail to comply with it, there was adequate machinery under the Charter to enforce compliance.

38. The representative of the Union of South Africa had stated that the Court had not expressed the view that upon the demise of the League of Nations, South Africa had automatically become responsible to the United Nations for the administration of South West Africa. The Philippine delegation could find nothing in the Court's opinion to support that contention. On the contrary, the Court had been specific in concluding that the United Nations had succeeded to the supervisory functions formerly exercised by the League, that South Africa was under an obligation to submit to the supervision and control of the General Assembly and to render annual reports to it, and that the duty to transmit petitions formed part of its obligation to submit to United Nations supervision. The Union of South Africa had perhaps been misled by the General Assembly's generosity in offering to negotiate with it on procedural means of implementing the Court's opinion.

39. The Philippine delegation continued to maintain the view which it had advanced in the Fourth Committee (194th meeting) at the fifth session, when the General Assembly had accepted the Court's advisory opinion, that adequate administrative machinery existed in the United Nations for dealing with annual reports and petitions, once such reports and petitions had been submitted to the General Assembly. It had considered that a useful function of the negotiations between the *Ad Hoc* Committee and the Union of South Africa might have been to modify the procedure under

the Mandate regarding the handling of annual reports and petitions, in order to bring it into line with present conditions. It had noted at the time that, according to the practice of the League of Nations, neither the drafting nor the revision of the questionnaire on which annual reports were based, nor the promulgation of regulations for the receipt and examination of petitions, had been subject to the prior approval of the Mandatory Power. The fact that the Philippine delegation had agreed to negotiations between the United Nations and the Union of South Africa on procedural means of implementing the Court's advisory opinion, as a gesture of conciliation, did not in any way preclude it from insisting on the undoubted right of the General Assembly to revise the questionnaire as well as the regulations regarding petitions, once it had been shown that the Union of South Africa was not willing to negotiate on the basis of the advisory opinion.

40. The United Nations could not passively accept the refusal of the Union of South Africa to submit annual reports. In order to exercise its supervisory functions in the interest of the inhabitants of South West Africa, it must use any means available to ascertain whether or not the territory was being administered in accordance with the terms of the Mandate. The same held true with regard to petitions, which the *Ad Hoc* Committee had been unable to examine because of South Africa's refusal to transmit them to the United Nations as required by the procedure of the Permanent Mandates Commission. Those considerations had moved the Philippine delegation to join with twelve other Powers in submitting draft resolution A/C.4/L.305/Rev.1.

41. At the same time, it wished to conserve the spirit of the various General Assembly resolutions, which had envisaged the continuation of negotiations. It did not wish to rule out the possibility that the United Nations and the Union of South Africa might finally come to an agreement, either on the procedural question of modifying the Mandates System of examining annual reports and petitions or on the substantive question of a new agreement to change the status of South West Africa from a mandated territory to a Trust Territory under the United Nations. Draft resolutions A/C.4/L.305/Rev.1 and A/C.4/L.306 and Add.1, of which the Philippine delegation was also a co-sponsor, envisaged both possibilities but, unlike the former resolutions of the General Assembly, did not stop at that point. Failure by the Union of South Africa to accept either alternative would not mean the suspension of the procedure which had applied under the Mandates System for the receipt and examination of annual reports and petitions. That procedure remained in force, and it was incumbent upon the United Nations to make use of it, should the Union of South Africa persist in its attitude. Hence, draft resolution A/C.4/L.305/Rev.1 outlined what the committee on South West Africa should do, should the Union of South Africa fail to submit reports or to transmit petitions from the inhabitants of the territory. In the absence of an annual report, the committee could examine, within the scope of the questionnaire adopted by the Permanent Mandates Commission, such reliable information and official documentation as might be available in respect of the territory of South West Africa. As the representative of Denmark had pointed out, that procedure had been suggested by the Union of South Africa itself. Regarding petitions, in the event of the failure of the South

African Government to submit its comments within a reasonable time, the Committee would be entitled to examine them, just as under the procedure adopted by the Permanent Mandates Commission which had recognized that the right of petition was inherent in the peoples of the mandated territories.

42. The Philippine delegation did not intend for the time being to propose that the United Nations should call upon former Members of the League of Nations, whether or not they were Members of the United Nations, to initiate the proper proceedings before the International Court of Justice under article 7 of the Mandate. The purpose of the submission of annual reports and the transmission of petitions was to give the international community information from which it could ascertain whether or not the mandated territory was being administered in accordance with the terms of the Mandate. If the information which would be made available under the terms of draft resolution A/C.4/L.305/Rev.1 showed that the territory of South West Africa was being administered in accordance with the spirit of the Mandate, as the Government of the Union of South Africa claimed, the failure of that Government to submit annual reports, though reprehensible, would be only a technical violation of the Mandate. On the other hand, if the General Assembly was unable to appraise the real situation because of the failure of South Africa to co-operate, or if the information available showed that the territory was not being administered in accordance with the terms of the Mandate, the way would be clear for the United Nations to recommend proceedings under article 7 of the Mandate which, in the unanimous opinion of the International Court of Justice, had been preserved under Article 37 of its Statute.

43. Mr. TARZI (Afghanistan) said that the question of the territory of South West Africa had been before the General Assembly for many years, but despite the resolutions that had been passed, no solution had been found. It was regrettable that the efforts of the General Assembly should have been continually opposed by one of its Members. The Union of South Africa should realize that the United Nations action was prompted only by its duty under the Charter. According to Article 73, the "sacred trust" applied to each Member of the United Nations, including the Union of South Africa.

44. The efforts of the *Ad Hoc* Committee to reach an agreement with the Union of South Africa had failed because the latter refused to co-operate in putting the advisory opinion of the International Court of Justice into effect, rejecting out of hand the principle of United Nations control. The delegation of Afghanistan reiterated its view that every effort should still be made to comply with the terms of the advisory opinion. The proposed new instrument to be negotiated with the three Principal Allied and Associated Powers would be contrary to the terms of the Charter and the Mandate of the League of Nations. Such negotiations could be conducted only between the Union of South Africa and the United Nations or a responsible agent acting on its behalf. He trusted that the Union of South Africa would be guided in the end by its duty to the United Nations and would help to settle the problem. It was in that spirit that the delegation of Afghanistan had joined with the sponsors of the thirteen-Power draft resolution (A/C.4/L.305/Rev.1).

Draft report of the Fourth Committee on agenda items 32, 33 and 34 (A/C.4/L.278 and Add.1) (continued)

45. Mr. RIFAI (Syria), Rapporteur, recalled that at the 356th meeting the Fourth Committee had adopted, as amended, the draft report (A/C.4/L.278) on information from Non-Self-Governing Territories covering items 32, 33 and 34 (a) of the agenda of the General Assembly. Item 34 (b), on the cessation of the

transmission of information on Puerto Rico, had still been under discussion at the time. Document A/C.4/L.278/Add.1, dealing with item 34 (b), was a continuation of the previous report. After its adoption, the two documents would be put before the General Assembly for approval as a single report.

Document A/C.4/L.278/Add.1 was adopted.

The meeting rose at 12.50 p.m.