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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, A/C.4/L.304) (*continued*)**

[Item 36]*

1. The CHAIRMAN declared that the list of speakers desiring to take part in the general debate on the question of South West Africa was closed.
2. Mr. HUSAIN (India) recalled that the question of South West Africa had been on the agenda of almost all the previous sessions of the General Assembly. In view of the importance of the subject and the serious consequences which would follow should the United Nations fail to implement its decisions in the matter, reached after prolonged and mature consideration, he felt that the basic elements of the problem should be restated.
3. South West Africa had been taken from Germany after the First World War and, by virtue of Article 22 of the League of Nations Covenant, placed under the administration of the Union of South Africa under the Mandates System. It had continued to be so administered until the demise of the League in 1946. Under Article 22 of the Covenant, the Mandatory was to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory, the ultimate aim under the Covenant being the attainment of self-government and independence; the Mandatory had, moreover, to submit an annual report to the Council of the League of Nations.
4. The Mandates System had been replaced by the International Trusteeship System provided for in Chapter XII of the United Nations Charter. The old mandates had been converted into trusteeship agreements by the administering Powers, under which those Powers submitted annual reports and petitions from individuals or organizations to the United Nations. The United Nations could also exercise supervision by sending visiting missions to the Trust Territories.
5. In the first part of the first session of the General Assembly, the Members of the United Nations had been exhorted, in resolution 9 (I), to submit trusteeship agreements as early as possible. With the sole exception of South West Africa, all other mandated territories had been placed under trusteeship by the

administering Powers concerned, or had become independent countries. The Union of South Africa had said that under the strict interpretation of Article 77 of the Charter it was not obligatory for it to submit a trusteeship agreement, and in the second part of the first session it had stated (A/C.4/41) that South West Africa should be incorporated in the territory of the Union.

6. The Government of the Union of South Africa had based its proposal on the following reasons. First, South West Africa was geographically and strategically a part of South Africa, with which it had obvious ethnological kinship. Secondly, South West Africa was so thoroughly integrated with the Union that its formal incorporation was required mainly to remove doubts, and thus to attract capital and encourage individual initiative and to render unnecessary a separate fiscal system. Thirdly, the wishes of the European population had been expressed through the normal democratic channels and the wishes of the others had been ascertained in an equally democratic but rather different way: of the non-whites, 208,850 had wanted the country to become part of the Union, 33,520 had been against and it had not been possible to consult the remaining 56,790. Thus 87 per cent, of the population had declared itself in favour of incorporation. Lastly, the reports of the Permanent Mandates Commission had for twenty years been almost uniformly favourable to the South African Government.

7. With regard to the interpretation of Article 77 of the Charter, the Government of the Union of South Africa had claimed that the Mandate in respect to the territory had lapsed and that while it continued to administer the territory in the spirit of the trust it had originally accepted, as a result of the demise of the League of Nations, it had no other international commitments. That view, which had been repeatedly expressed, was erroneous and had no justification whatsoever, especially after the advisory opinion obtained by the General Assembly from the International Court of Justice.¹

8. He recalled the questions that the General Assembly had asked the International Court and the opinion that the Court had rendered in reply. The first question had been: "Does the Union of South Africa continue to have international obligations under this Mandate for South West Africa and, if so, what are those obligations?" The International Court had replied that the terms of the Mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein showed that the creation of the new international institution did not involve any cession of territory or transfer of sovereignty to the Union of South Africa. The South African Government had had to exercise an international function of administration on behalf of the League, with the object of promoting the well-

* 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.*

being and development of the inhabitants. The contention made on behalf of the South African Government that the Mandate had lapsed because the League had ceased to exist had been based on a misconception of the legal situation created by Article 22 of the Covenant and by the Mandate itself. The international rules regulating mandates had, according to the Court, constituted an international status for the territory recognized by all the Members of the League of Nations, including the Union of South Africa. In the view of the Court, the authority which the South African Government had exercised over the territory had been based on the Mandate. If the Mandate had lapsed, as the South African Government contended, the latter's authority would actually have lapsed. To retain the right derived from the Mandate and to deny the obligations thereunder could not be justified.

9. The Court had further been of the opinion that for the Mandatory Power certain obligations had been created which were the very essence of the "sacred trust of civilization," mentioned in Article 22 of the Covenant of the League of Nations. Their fulfilment did not depend on the existence of the League of Nations, and they could not be brought to an end merely because that supervisory organ had ceased to exist. Nor could the right of the population to have the territory administered in accordance with those rules depend thereon.

10. That view was borne out by Article 80, paragraph 1, of the Charter, which preserved the rights of States and peoples and the terms of existing international instruments until the territories in question were placed under the Trusteeship System. Obviously therefore, the right of States and peoples could not automatically lapse on the dissolution of the League. In regard to Mandated Territories, paragraph 2 of that article clearly stated that paragraph 1 of the same should not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of trusteeship agreements. A people or a territory could not, therefore, be in an endless state of suspended animation.

11. That view resulted, moreover, from the resolution of the League of Nations of 18 April 1946,² from which the Indian representative proceeded to cite an extract.

12. The International Court had therefore concluded that the Union of South Africa continued to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions were to be submitted, and the reference to the Permanent Court of International Justice being replaced by a reference to the International Court of Justice, in accordance with article 7 of the Mandate and Article 37 of the Statute of the Court.

13. The second question put to the International Court had been as follows: "Are the provisions of Chapter XII of the Charter applicable and, if so, in what manner, to the Territory of South West Africa?" The answer to that question was that while the provisions of Chapter XII of the Charter did not impose on the South African Government a legal obligation

to place the territory under the Trusteeship System, the provisions of Chapter XII were applicable to South West Africa in the sense that they provided a means by which the territory might be brought under the Trusteeship System.

14. It might be mentioned that the view that there was no legal obligation to submit a trusteeship agreement had been held by the Court by a narrow majority of eight votes to six. Therefore no less than six of the judges had held the view that the South African Government had a clear legal obligation to submit a trusteeship agreement. The Indian delegation agreed with that view because it appeared to be fully justified, as was obvious from the resolution of the League of Nations of 18 April 1946 and paragraph 2 of Article 80 of the Charter of the United Nations.

15. The third question put to the International Court had been: "Has the Union of South Africa the competence to modify the international status of the territory of South West Africa, or, in the event of a negative reply, where does competence rest to determine and modify the international status of the territory?" The answer to that question had been that it was clear that the Union of South Africa had no competence to modify unilaterally the international status of the territory or any of the international rules embodied in Article 22 of the Covenant and in the Mandate. That was shown by article 7 of the Mandate, which had expressly provided that the consent of the Council of the League of Nations was required for any modification of the terms of the Mandate. The Court had unanimously concluded that the Union of South Africa, acting alone, had not the competence to modify the international status of the territory of South West Africa, and that the competence to determine and modify the international status of the territory rested with the Union of South Africa acting with the consent of the United Nations.

16. It was clear, therefore, that the South African Government, like all other Mandatory Powers, should have submitted for the consideration of the General Assembly a trusteeship agreement in respect of South West Africa. It was highly regrettable that it had not done so, despite the opinion expressed by the International Court of Justice, the six repeated recommendations of the General Assembly,³ and the normal obligation recognized by all the Powers that administered the former Mandated Territories.

17. With regard to the other reasons put forward by the South African Government, and particularly the allegation that it was in the interest of the inhabitants of South West Africa to be included in the territory of the Union, the truth of the matter was that the people of South West Africa, by incorporation into the territory of the Union, would become permanently subject to the same discriminatory practices from which the coloured inhabitants of the Union were at present suffering. Since the beginning of the century a systematic attempt had been made to take away the limited rights of the non-whites with the distinct object of perpetuating their position of subordination and inferiority to the whites. He listed a number of discriminatory practices in force in the Union of South Africa which were directed against non-whites.

² See *League of Nations, Official Journal, Special Supplement No. 194*, p. 58.

³ See resolutions 65 (I), 141 (II), 227 (III), 337 (IV), 449 B (V) and 570 B (VI).

18. Driven to desperation by the segregation legislation, the Africans and other coloured people had launched in June 1952 a peaceful and non-violent resistance movement, as a result of which about 8,000 non-whites had been arrested. Many of them had been sentenced to heavy fines or unduly long terms of imprisonment, and had been ill-treated by the police. The Government had made extensive use of its powers under the Suppression of Communism Act to intensify its campaign. In addition, it had recently assumed dictatorial and autocratic powers by enacting new laws such as the Public Safety Act and the Criminal Law Amendment Act, which had been described by the *Rand Daily Mail*, a leading newspaper of the Union, as a reversion to barbaric despotism and as unheard-of in any civilized country in time of peace. Moreover, the conditions prevailing in the Union of South Africa had been fully described in the report of the United Nations Commission on the Racial Situation in the Union of South Africa (A/2505 and Add.1 & Add.1/Corr.1 and 2). The inhabitants of South West Africa had, therefore, nothing to look forward to by incorporation of their territory into the Union of South Africa.

19. Mr. JOOSTE (Union of South Africa), speaking on a point of order, reminded the Committee that it was at present dealing with the question of South West Africa, and not with the situation which the Indian representative alleged to be prevailing today in the Union of South Africa. Furthermore, no proposal had been submitted concerning the incorporation of South West Africa into the Union of South Africa.

20. His delegation had never objected to the examination by the organs of the United Nations of certain problems which interested the Union of South Africa. In the present case, however, it felt bound to ask for the protection of the Chair against the attacks directed against it by the Indian representative.

21. The CHAIRMAN requested the Indian representative to resume his speech, and to confine himself strictly to the matter on the Committee's agenda.

22. Mr. HUSAIN (India) commented that although the Committee was not dealing with the question of the incorporation of South West Africa into the Union of South Africa, it was examining South Africa's administration of that territory. The conditions were such that the future of the territory and the very life of its inhabitants, would be endangered if the United Nations failed to exercise the international supervision provided for in Chapter XII of the Charter.

23. Thirty years of administration by South Africa had not led to any notable progress. There was the acute land problem caused by the fact that the white settlers had obtained a disproportionate share of the land fit for grazing or cultivation. For the last five years certain tribesmen of South West Africa had been petitioning the United Nations for the return of their traditional land and the reunification of their tribes, opposed by the South African Government. At present there were in South West Africa no secondary schools or higher educational or technical training colleges for the coloured inhabitants. In the matter of health there was urgent need, and, furthermore, there were no organized health services within the Native Reserves. The living conditions of agricultural labourers and urban Native workers were also deplorable; even allowing for the characteristic inertia of the indigenous inhabitants, that was a serious reflection upon the Administration. Such being the state of affairs in

South West Africa, it was not surprising that the various tribal chiefs had repeatedly informed the United Nations that they opposed any permanent incorporation of their territory into the Union of South Africa.

24. As pointed out by the representative of the Union of South Africa at the 357th meeting, the South African Government had indicated that nearly 90 per cent of the population of South West Africa had expressed a desire in favour of incorporation. However, reliance could not be placed on the value of a consultation the purpose and consequences of which the population, in view of its primitive state of development, had probably failed to understand. The fact that 90,000 members of the indigenous population had not been consulted or had given a negative reply should, moreover, be borne in mind. Furthermore, the consultation had been conducted exclusively by officials and agents of the Government interested above all in securing the incorporation of the territory. The chiefs and tribal councils whose wishes had been ascertained had been appointed by the Government. As for the white population, only 10 per cent had expressed themselves in favour of incorporation. The Reverend Michael Scott had challenged the results of the consultation. The South African Government had consistently prevented the representatives of South West African tribes from stating their case before the United Nations. In view of the foregoing considerations, it could not be claimed that the population of South West Africa had, at that time, actually exercised the right of peoples to self-determination. That was why, under the draft resolution submitted by Burma and India (A/C.4/L.304), the *Ad Hoc* Committee on South West Africa was authorized to inquire as it deemed fit into the wishes of the local population regarding the future status of the territory of South West Africa.

25. It should be borne in mind that whatever economic, social and cultural progress was achieved in a Non-Self-Governing Territory, it must not be the purpose of the administering Power to effect a political annexation which could not be justified by considerations of geographical contiguity, economic dependence or unity of administration. A policy of territorial aggrandizement had been replaced by the Mandates System after the First World War. Article 4 of the Mandate for South West Africa clearly stated that the absorption of the Mandated Territory into the territory of the administering Power had not been considered. Hence, the United Nations should not agree to the annexation of a former Mandated Territory—a step completely at variance with the basic principles of the Charter—for to do so would be to transform the Trusteeship System into a system of spoliation or to allow it to degenerate into an insignificant paper scheme, thus disappointing all dependent peoples who aspired to full self-government. Under the Covenant of the League of Nations and the Charter of the United Nations the only way to terminate a mandate was for the population of a Non-Self-Governing Territory to attain independence and to be admitted to the United Nations. The situation would be quite different if, after becoming a sovereign State, South West Africa wished to join the Union of South Africa. Such a request would then be juridically acceptable. As long as the territory did not enjoy self-government, it was the duty of the United Nations to supervise the administering Power.

26. The Government of the Union of South Africa persisted in its refusal to place South West Africa under

the Trusteeship System because it would be required, under that system, to practice a policy of racial equality. The policy of *apartheid*, constituting as it did a flagrant violation of the provisions of the Charter and of the Universal Declaration of Human Rights, would, of course, immediately pit the South African Government against the Trusteeship Council. However, an administering Power could not adduce that argument in order to shirk its obligations under the Trusteeship System.

27. The work of the United Nations in dealing with the question of South West Africa had consisted of several stages. The Union of South Africa had been the only Mandatory Power to refuse to submit a trusteeship agreement concerning South West Africa, as required under General Assembly resolution 9 (I). Moreover, it had failed to act on resolution 65 (I) on the ground that under Chapter XII of the Charter there was no legal obligation for the Mandatory Power to accept the Trusteeship System and that the Government had again consulted the inhabitants of South West Africa who had reiterated their desire for incorporation into the Union. He had already refuted that argument.

28. The South African Parliament had then resolved to administer South West Africa as an integral part of the Union. That Parliament, however, had not had a single African representative, and only three Europeans out of 156 had been assigned to represent African interests. Moreover, that decision had not been supported by a single non-European body in South Africa or by any African organization in the world. The South African Government had thus refused not only to respect the resolutions of the General Assembly but also to discharge its legal and moral obligations.

29. Since then, at every session of the General Assembly, that Government had been invited to submit a trusteeship agreement concerning South West Africa and to present annual reports on its administration of the territory for consideration by the Trusteeship Council. It had refused to submit the trusteeship agreement requested of it. After submitting a report for 1946 (A/123), it had refused to transmit any further reports, in violation of the international obligations it had assumed under Article 22 of the Covenant of the League of Nations and under the Mandate. It had further refused to honour its obligations to submit petitions from the inhabitants of the territory to enable the United Nations to exercise its supervisory functions, despite the fact that the International Court of Justice had held that the supervisory functions prescribed under the Mandate were to be exercised by the United Nations, and both annual reports and petitions should be transmitted to the Organization.

30. The South African Government had gone further; in accordance with the decision it had announced at the third session of the General Assembly,⁴ it had virtually incorporated South West Africa in its territory under the South West Africa Affairs Amendment Act, which denied the territory any form of international supervision and provided for South West African representation in the two houses of the Parliament of the Union of South Africa. However, while the white population, numbering one-tenth of the whole population of South West Africa, had six representatives in the House of

Assembly, the non-whites, who comprised nine-tenths of the population, were represented by only one senator, who was appointed by the Government and who was required to be white.

31. A serious situation having arisen and the International Court of Justice having given its advisory opinion to dispose of legal objections, the General Assembly had, in 1950, adopted resolution 449 A (V), establishing an *ad hoc* committee to confer with the South African Government concerning the means of implementing the advisory opinion of the Court. The *Ad Hoc* Committee on South West Africa, faithfully adhering to the basic principles of its terms of reference, had worked for the past three years with admirable patience in a commendable effort to find a solution. He wished to pay a tribute to that Committee, and he was gratified to note that the Committee and the South African delegation had reached agreement on certain points listed in paragraph 2 of section A of the draft resolution submitted by India and Burma (A/C.4/L.304).

32. In accordance with its terms of reference, the Committee had negotiated on the basis of two important principles which could not be abandoned without serious damage to the prestige of the United Nations and without infringing the purposes and principles of the Charter, namely, that a new international instrument could be concluded only with the United Nations or with an agency appointed by and responsible to the United Nations, and that the supervision of the administration of South West Africa, while it was not to exceed that which had applied under the Mandates System, should be exercised by the United Nations. It was not possible to depart from those two basic principles and that was why, in the draft resolution of which it was one of the sponsors, India took the view that the Committee should continue to be guided by those principles and should insist upon them in its negotiations. The Mandate could be replaced only by an agreement with the United Nations and not with the three former Allied and Associated Powers because there could be no departure from the principle of international accountability, on which the Mandate of the League of Nations had been, and the Trusteeship System was now, based. Further, international supervision could be exercised only by the United Nations; the International Court of Justice, whose supervision would be acceptable to the South African Government, could not be given that task. It was clear from article 7 of the Mandate for South West Africa that the Court's competence was limited to disputes which might arise between the Mandatory and another Member of the League of Nations relating to the interpretation of the application of the provisions of the Mandate. The Mandate did not authorize the Court to become itself a supervisory body, and that was as it should be: the Court was a judicial body, concerned only with legal questions, and it could not be asked to perform the functions of the Trusteeship Council. The suggestion made by the representative of the Union of South Africa at the 357th meeting was therefore impracticable and could not be accepted by the Committee.

33. He paid a tribute to the moderate tone of the statement made by the representative of South Africa at the 357th meeting and expressed his gratification that the South African Government had declared itself anxious to find some means by which a final settlement of the problem could be found. The Indian delegation felt sure that it was interpreting the wishes of all the

⁴ See *Official Records of the General Assembly, Third Session, Part I, Fourth Committee, 76th meeting.*

members of the Committee when it expressed the hope that the question would be speedily settled in a spirit of co-operation and mutual understanding, and it was prepared to assist fully towards that end.

34. He had heard with regret the South African representative's remarks concerning the tone of the Committee's discussion of the question. The Committee had shown the utmost patience in trying to find some solution satisfactory both to the Union of South Africa and the United Nations, which represented the interests of the people of South West Africa. The failure of those efforts was due not to the tone of the discussion but to the legal objections raised by the South African Government and sustained despite the opinion of the International Court of Justice. The South African representative had said that his Government was not prepared to accept the principle of accountability to the United Nations for the administration of South West Africa and had reproached the United Nations for continuing to ask his Government for a trusteeship agreement for that territory despite the opinion of the Court. However, the principle of accountability to the United Nations was a fundamental principle which had led the General Assembly six times to ask for a trusteeship agreement, not despite the opinion of the Court but precisely on account of that opinion. The Court had stated that the provisions of Chapter XII of the Charter were applicable to South West Africa in the sense that they provided a means by which the territory might be brought under the Trusteeship System.

35. He then took up the argument of the South African delegation to the effect that the *Ad Hoc* Committee had not been able to reach an agreement with the South African Government owing to the restrictive nature of its terms of reference. However, the only restriction placed on the Committee was the opinion of the Court, which was based on the principle of accountability to the United Nations. It was a principle with regard to which the United Nations could accept no compromise because it could not abdicate its responsibility to the people of the former mandated territories. On the other hand, the South African representative had pointed out that his Government was not prepared to subscribe to all the findings of the Court nor to accept its opinion *in toto*. It would be extraordinary to suggest that only those parts of a judgment or judicial finding could be accepted which were considered satisfactory; if

that were so, there would be no point in securing such decisions. In that connexion, it was difficult to understand how the South African Government could, on the one hand, accept the exercise of supervision by the Court in accordance with article 7 of its Mandate and, on the other hand, declare that it refused to accept as a whole an opinion by that same Court on a vital matter.

36. There was one basic fact: the new instrument should be concluded not with the former Principal Allied and Associated Powers, as suggested by the South African Government, but with the United Nations. On the other hand, the South African Government need not be asked to accept responsibilities greater than those it had borne under the Mandate. Despite the difference in composition between the United Nations and the League of Nations, the *Ad Hoc* Committee could certainly succeed in finding a formula guaranteeing that the obligations involved would not be greater than formerly; the fact that it had hitherto been unable to find such a formula was due to the South African Government's refusal up till the present to admit any United Nations supervision whatsoever. He was convinced that if that Government accepted the basic principle, the two parties, with goodwill on both sides, could find a satisfactory solution in the *Ad Hoc* Committee.

37. In the light of the considerations he had mentioned, the Indian delegation had joined the Burmese delegation in submitting a draft resolution (A/C.4/L.304). It hoped that its provisions would make possible a speedy solution of the problem.

38. In its efforts to solve the present question the United Nations was endeavouring above all to ensure, in accordance with the principles of the Charter, the welfare of the people of South West Africa, since owing to its historical background, that people was not in a position at present to look after itself. That should be the concern of all the Members of the United Nations, including the Union of South Africa, and the Indian delegation earnestly appealed to that country to join in a spirit of charity and humanity in the common effort in order to strengthen the prestige of the United Nations and to fulfil the hopes reposed in it by the peoples of the under-developed countries of the world.

The meeting rose at 4.30 p.m.