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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 and 2, A/C.4/245, A/C.4/L.305/
Rev.1 and Add.1, A/C.4/L.306 and Add.1)
(continued)**

[Item 36]*

1. The CHAIRMAN drew the Committee's attention to the Secretary-General's statement on the financial implications of draft resolution A/C.4/L.305/Rev.1 and Add.1 (A/C.4/245).

2. Mr. FRAZAO (Brazil) said that on the question of South West Africa the United Nations was divided into two camps: on the one hand, the fifty-nine Members which had accepted the advisory opinion of the International Court of Justice¹ and on the other, the Union of South Africa, insisting on its own interpretation of the legal position. The resolutions on the matter adopted by the General Assembly since 1946 had not always met with unanimous approval, for they had been unable to satisfy the wishes of all fifty-nine delegations regarding the manner of negotiating with the Union of South Africa with a view to putting the Court's advisory opinion into effect. Nevertheless, the essential argument of the Union of South Africa had never been accepted by any member of the other group.

3. The difference of opinion on the international status of South West Africa and the responsibility incumbent on the South African Government in virtue of that status had grown most acute when that Government had refused to negotiate with the United Nations on the basis of the Court's opinion. It had accepted certain general points of the opinion, but had rejected the principal conclusions regarding the obligations of the Mandatory Power towards the international community and those obligations which touched upon the exercise of the "sacred trust" mentioned in Article 22 of the Covenant of the League of Nations, which it had declared it wanted to carry out. Despite its assurance that it would continue to administer the territory in the spirit of the sacred trust, the South African Government at the same time denied the existence of the legal instrument under which that sacred trust had been imposed and accepted as well as the continuing

character of its international responsibilities, in view of the disappearance of the mandator, i.e., the League of Nations, and the automatic termination of all the obligations attaching to its position as trustee for the international community. The South African Government had justified its position chiefly by transposing the idea of the mandate in ordinary law to the international level, which was tantamount to eliminating the concept of a sacred trust, the essence of the Mandate as envisaged in Article 22 of the Covenant of the League of Nations. The justification had then been based on the concept in private law regarding the termination of obligations on the disappearance of the mandator.

4. That disagreement on the initial principles had led to the refusal by the South African Government to take one of the two decisions which would have seemed to be in conformity with its willingness to continue to administer South West Africa in the spirit of articles 2 to 5 of the Mandate: to negotiate a new agreement with the United Nations in order to make the international responsibility of the South African Government effective, or to place the territory under the Trusteeship System, as all the other Mandatory Powers which were Members of the United Nations had done in the case of the territories entrusted to them. The fact that they had all done so left the South African Government in an isolated position, not easy to defend before public opinion. It had sought to defend itself by placing somewhat doubtful rights above legally correct obligations which, under Anglo-Saxon law, derived their coercive character not only from the binding force of voluntarily accepted contracts but also from the principle of equity, which protected and sanctioned all types of trusts.

5. In seeking to dictate the terms on which the new international instrument would be negotiated, and determining who should be the other party to it, the South African Government had arrogated to itself and to the three Principal Allied and Associated Powers the quality of heirs to the League of Nations and to the powers of sovereignty over South West Africa. The powers of administration delegated to the Union in order to assist in the development of the former German colony had, in practice, been transformed into absolute powers; the aspect of delegation was taken to have disappeared, and the system of submission to an international trusteeship exercised by the League of Nations through an administering Power changed into another system in which the international character of the trusteeship, with all it implied in the way of control and responsibility, no longer existed. The international character of the administration entrusted to the Government of South Africa would have been replaced by an administration purely on its own account; it would thus have been released from the specific obligations of the Mandatory Power towards the mandator, owing to the disappearance of the latter.

* 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.

Such transposition of a notion of ordinary law on to the international plane was incorrect. However, even if it was agreed that when the mandator ceased to exist, the mandate lapsed, the mandatory, which was bound to safeguard the property and rights entrusted to its care or administration, remained bound by the terms of the mandate despite its extinction.

6. The total absence of legal support for the South African argument regarding the analogy between the institution of the mandate under ordinary law and the institution created by the League of Nations was also brought out in the Court's advisory opinion. It was stated in that opinion (p. 132) that the "Mandate" had only the name in common with the several notions of mandate in national law. The object of the mandate regulated by international rules far exceeded that of contractual relations regulated by national law. The South African argument completely disregarded the international status of South West Africa which, once it had been created and recognized by the international community, could not be suppressed by the unilateral action of the State which had simply been called upon to administer it. That impossibility in law invalidated any act, even the act of taking a plebiscite, tending towards incorporation, which was contrary to the idea of the mandate, unless the international community, through the organ representing it, consented to the referendum and laid down the standards with which it was to comply.

7. He wished to quote in that connexion the statement made at the 190th meeting of the Fourth Committee by Mr. Vicente Ráo, the Brazilian representative on that Committee at the fifth session, who was now the Minister of External Relations of Brazil: the appeal to ordinary law should be rejected because of the nature of the mandate held by the Government of South Africa and also because it was absurd to claim that the termination of the mandate meant that the mandatory was released of its obligations while retaining its rights.

8. The South African Government, advancing historical and legal arguments in support of its attitude, had alleged that the original Mandate had been conferred on the Union by the Principal Allied and Associated Powers and that historical reasons gave it grounds for considering the negotiation of a new instrument with the three of those Powers remaining, on the clear understanding that they would act as principals and not as agents of the United Nations. However, the history of trusteeship and of the Mandates System made its international character plain, and that character had been preserved in the related legal instruments. Again quoting Mr. Ráo, he said that the notion of the Mandate could not be reduced to the relationship between the administering Power and the former Members of the League of Nations without betraying its essential purpose. The choice of the Mandatory Powers by the Principal Allied and Associated Powers had not been legally sanctioned until it had been confirmed by the Covenant. Acts signed by the League of Nations could not be understood and applied as though they were individual treaties between the States involved. Thus, the Mandatory Power had undertaken obligations towards the League, the party which had entered into the contract on behalf of the international community, and not towards the former Members of the League of Nations taken individually. The right of those States to take legal action did not affect the validity of the conclusion, since the exercise of that

right would presuppose a specific violation of the Mandate, and had nothing in common with the general supervisory functions belonging to the League of Nations. Moreover, the administrative machinery of control had not been exercised by the League of Nations on behalf of individual Members but had been exercised in the name of the League itself. The legal position with regard to succession, to which the South African Government would not agree, was made clear in the resolution adopted by the League on 18 April 1946,² which had recognized that although on the termination of the League's existence, its functions with respect to the mandated territories would come to an end, Chapters XI, XII and XIII of the Charter of the United Nations embodied principles corresponding to those declared in Article 22 of the Covenant. The resolution had noted the expressed intentions of the Members of the League then administering territories under mandate to continue to administer them in accordance with the obligations contained in the respective mandates until other arrangements had been agreed between the United Nations and the respective Mandatory Powers.

9. As Mr. Ráo had also emphasized, the United Nations had thus been recognized, by the former Members of the League of Nations at least, as the new organ of the international community legally empowered to negotiate agreements resembling the previous agreements, as the League's successor. The Union of South Africa, in its statement to the Fourth Committee on 4 November 1946 (A/C.4/41) had not questioned that conclusion. In a letter of 23 July 1947 to the Secretary-General of the United Nations (A/334), the South African delegation had referred to a resolution adopted in the Union Parliament affirming that the Government should continue to render reports to the United Nations as it had done heretofore under the Mandate. The Brazilian delegation regarded those statements as a ratification; they had validated the obligations which derived from a situation of succession accepted as such. They could not be disavowed by later interpretations tending to diminish the scope of those obligations.

10. It was clear from the report of the *Ad Hoc* Committee on South West Africa (A/2475 and Add.1 and 2) and from the statement of the South African representative (357th meeting) that the South African Government could not agree to the conclusion of a new instrument with the United Nations because South Africa would thus be obliged to assume heavier responsibilities than those contained in the Mandate. The reasons advanced had made no mention of the rights of the people on whose behalf the Mandate had been instituted. The Brazilian delegation considered that those interests, rather than the rights and interests of the Mandatory Power, should be the key to the problem. The Brazilian delegation agreed that if the Union of South Africa had acted as all the other Mandatory Powers of the League of Nations had done, the Union's responsibilities to the international community would have increased. It also agreed that the South African Government was free to renounce its mission and to resign from its administrative functions. What could not be agreed was that, on the pretext of not increasing its obligations, it should evade accountability to the international community by modifying unilaterally the acquired rights of the population of the territory to a

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

system of protection and to the safeguards implied in their international status. In practice, the Union was acting as though the rights of the mandator had been transferred to it. That transfer was not and could not be sanctioned either by law or by morality, which was the essence of the notion of equity on which much of the Anglo-Saxon legal system, to which the Charter of the United Nations could undoubtedly be related, was based.

11. The negotiations between the United Nations and the Union of South Africa had not made a great deal of progress since the dispute had arisen. However, the Brazilian delegation noted with pleasure that the Government of the Union had not refused irrevocably to negotiate or confronted the United Nations with a *fait accompli*. There was therefore still hope for a final settlement which would be acceptable to the United Nations. The resolution before the Committee (A/C.4/L.305/Rev.1 and Add.1) also made it plain that until such an arrangement was made, the United Nations would not renounce any of its duties to the population of South West Africa. The *Ad Hoc* Committee for South West Africa should therefore be placed on a permanent basis and should act as though it was a mandates commission. It should also be expanded so that it could become a truly representative organ of the Assembly. With broader terms of reference, it would be easier for it to negotiate in order to implement the Court's advisory opinion and to carry out the duties formerly incumbent on the Permanent Mandates Commission. The Brazilian delegation was sure that the South African Government would always find the Committee ready to approach the matter in the spirit of give and take urged by the South African delegation, provided of course that any such concessions did not imply the abandonment of principles essential to the United Nations. It expressed the sincere hope that it would be possible to reach an honourable settlement.

12. Mr. JOOSTE (Union of South Africa), replying to statements made during the general debate, said that he appreciated the evidence in many statements of a real desire to keep the discussion free from recrimination and acrimony. A few speakers, however, had shown a regrettable tendency to revert to the type of discussion which had militated against objective consideration of the problem in the past. The introduction of a joint Indian-Burmese draft resolution (A/C.4/L.304) setting out a final position for the Committee to adopt, before he had even stated his Government's case, seemed to be an example of unfortunate timing and had given his delegation the impression that its views were unimportant. While the Burmese representative's statement had been moderate and objective—though Mr. Jooste was unable to agree with some of its conclusions—he was at a loss to see how the Indian representative's statement, or for that matter the statements of the representatives of the Byelorussian SSR, USSR, Czechoslovakia and Iraq, among others, could be considered as constructive attempts to promote a solution. There was no need for him to reply in detail to those representatives, since he was satisfied that the Committee as a whole had not been misled by their utterances and realized that references to alleged oppression and slavery in South West Africa were intended for propaganda purposes only. He did not have to demonstrate the cynical nature of the reference to South Africa's growing territorial ambitions, coming as it did from the USSR representative.

13. Three main points had become clear. First, the overwhelming majority of the Committee claimed that his Government's disagreement with the advisory opinion of the International Court of Justice was unjustifiable; secondly, a number of speakers alleged that the South African Government had virtually incorporated South West Africa as a fifth province of the Union; and, thirdly, many references had been made to the alleged backwardness and even exploitation of South West Africa.

14. On the first point, his Government's position had been very fully stated on previous occasions, but since its refusal to accept the Court's opinion *in toto* was still misinterpreted, he felt it necessary to reiterate his Government's views on certain aspects of the legal argument. It must be stressed that no interested party was automatically obliged to accept an advisory opinion of the International Court of Justice, since such an opinion did not have the same status as the verdict of a court of law. Hence, neither South Africa nor the United Nations had been obliged to subscribe to the advisory opinion if they disagreed with it on legal grounds. It was not true, as the Indian representative had alleged, that the South African Government had accepted only those parts of the opinion which were to its liking. After serious consideration his Government had come to the conclusion that the Court had erred in its juridical reasoning and that certain aspects of the problem had merited more detailed consideration. Its refusal to accept the Court's opinion *in toto* did not indicate any lack of respect for the Court and was based exclusively on the following juridical grounds.

15. First, his Government was convinced that the Mandate over South West Africa had lapsed as a result of the demise of the League of Nations. The Court, however, had maintained that South West Africa must still be regarded as a territory under the original mandate, that the supervisory functions of the League of Nations had been transferred to the United Nations and consequently that the necessity for supervision continued to exist despite the disappearance of the supervisory organ under the Mandates System. His Government was unable to accept that contention as a statement of law; in order to do so it would have to agree that, because the Court believed that the necessity for supervision continued to exist, therefore the supervisory function actually did exist; that was something to which his Government could not subscribe.

16. Secondly, the Court had stated that it could not be admitted that the obligation to submit to supervision had disappeared merely because the supervisory organ had ceased to exist, when the United Nations had another international organ performing similar supervisory functions. There was a vast difference, however, between the old Mandates System and the Trusteeship System created by the Charter. His Government was firmly convinced that as a mandatory under the supervision of the United Nations, it would have obligations greatly in excess of those imposed under the Mandates System. Since it was recognized law that any increase in obligations would require the consent of the South African Government, that Government could not but dispute the Court's opinion.

17. Thirdly, the Court had relied to a large extent, in support of its conclusion that the Mandates System subsisted, on the provisions of Article 80 of the Charter. The South African Government, however, was convinced that Article 80 was irrelevant to the question.

Article 80, paragraph 1, was doubtless the basis for the impression many representatives had that the United Nations had ensured that the mandates, which had undoubtedly been in force at the time the Charter was drawn up, would continue in force, whatever else might happen, until trusteeship agreements were concluded. His Government believed that that impression was erroneous. Article 80 did not mean that subsequent action taken by the League, which had still existed at that time, should not be construed as altering the rights under, or the terms of, the Mandate. Action taken by the League within its own sphere of competence could not be affected by any provision of the United Nations Charter. Hence, Article 80 only safeguarded rights from being altered by the terms of Chapter XII; it could not safeguard rights under the terms of other international instruments from alteration by the parties to those instruments. It was for those parties to decide whether or not, and to what extent, those instruments were to be altered as a result of the establishment of the United Nations and the adoption of the Charter. The United Nations had no authority to take that decision on behalf of those parties. In expressing the view that the Charter provided that mandates would continue in existence in spite of any subsequent action which might be taken by the League, the Court had contradicted itself, since it had also stated in its opinion 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" (p. 140). Although paragraphs 1 and 2 of Article 80 were worded in equally negative form, in the case of paragraph 2, the Court had deduced that no positive conclusion could be drawn from that paragraph regarding the obligation to enter into trusteeship agreements, whereas, in the case of paragraph 1, it had deduced that the obligations of the Mandates System continued to be in force. The two conclusions appeared to be in contradiction.

18. His Government could not agree with the Court that the resolution adopted by the League on 18 April 1946 presupposed that the supervisory functions exercised by the League would be taken over by the United Nations. The Court's reasons for that statement were quite inadequate, indicating as they did an automatic transfer of functions, whereas the resolution itself implied the necessity for action to effect such a transfer. No such action had ever been taken or agreed to by either the League or the United Nations, nor had the South African Government at any time signified that it had accepted a transfer of functions. The Court had apparently failed to take that fact into account and had therefore failed to prove its contention.

19. His Government could not accept the validity of the Court's conclusion that Article 10 of the Charter authorized the General Assembly to make recommendations with regard to the carrying out of the supervisory functions of the League of Nations. The Court had recognized, and his Government agreed, that the Charter provided for a single system of international supervision, namely the Trusteeship System. Article 10 of the Charter was equally explicit. It referred to matters within the scope of the Charter and to matters relating to the powers and functions of any organs provided for in the Charter. It was hard to see, therefore, how the Court could conclude that a matter, which it itself had held to be neither contemplated nor regulated by the Charter, nevertheless fell within the scope of the Charter.

20. The Court had expressed the opinion that the degree of supervision to be exercised by the General Assembly over South Africa's administration of South West Africa should not exceed that which had applied under the Mandates System and should conform as far as possible to the procedure followed in that respect by the Council of the League of Nations; it had not indicated how its opinion on that point was to be implemented. That was another reason why his Government could not accept the opinion or the supervision of the United Nations. He had dealt with that aspect of the question fully in his previous statement, and would only remind the Committee that the unanimity rule which had obtained in the League could not, without amendment of the Charter, be followed by the United Nations General Assembly, which was subject to the majority rule. Consequently, if South West Africa were placed under United Nations supervision, the Union of South Africa would, in its administration of the territory, have to forgo a right that it had enjoyed under the League. In the United Nations, its administration would be subject to the wishes of the majority, for the time being at any rate, while in the League all proposals had required the consent of the Mandatory Powers.

21. While his Government's position on the Court's opinion had been consistent, the same could not be said of some members of the Committee who sought to go beyond the findings of the Court. The Court had explicitly stated that the South African Government had no obligation to submit a trusteeship agreement; nevertheless, some representatives urged that, in order to implement the Court's opinion, South Africa should agree to an arrangement whereby South West Africa would be placed under trusteeship.

22. The charges that South Africa had virtually incorporated or annexed South West Africa were nothing new. The question of South West Africa's representation in the Union Parliament had first been considered in 1934 and the League of Nations Permanent Mandates Commission had been fully apprised of his Government's intentions in that regard. Had it not been for certain subsequent developments, there was little doubt that those intentions would have been implemented and that the Permanent Mandates Commission would have regarded representation in the South African Parliament as falling within the terms in which his Government was entitled to administer the territory. Furthermore, in 1946 and 1947 his delegation had specifically referred in the United Nations to the proposed grant of parliamentary representation to the territory. In resolution 227 (III) the General Assembly had taken note of that proposal without raising any objections. In 1949, at the fourth session, the implications of the South West Africa Affairs Amendment Act had been debated in full in the Fourth Committee. Charges that that legislation involved incorporation or annexation had been advanced. At the end of the debate, however, a USSR proposal (A/C.4/L.61) condemning the measures taken by the Union of South Africa as a violation of the United Nations Charter had been defeated, as had a similar proposal in 1950 (A/C.4/L.130). The rejection of those proposals should fully have disposed of the allegations of incorporation or annexation. However, since they had been repeated, he would deal with them briefly.

23. Such allegations were obviously intended to convey the impression that the South African Government had violated certain obligations. Article 2 of the Man-

date which South Africa had accepted in 1920 stated: "The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory subject to such local modifications as circumstances may require". Under that article, South Africa had therefore been given the competence to administer South West Africa and to legislate for South West Africa as an integral portion of its own territory, in other words, as part of South Africa. It had been argued that the phrase "as an integral portion" should be read to mean that South Africa had only the competence to administer South West Africa as "if" it were an integral portion of its own territory. It was a universally recognized principle of international law that the true meaning of any right or obligation accepted by a State was, in case of doubt, to be gathered from the intentions of those who took part in the creation of the right or obligation, and hence, that what was agreed upon during negotiations preceding the final conclusion of international instruments was to be taken as the authoritative interpretation of an existing text. At the Paris Peace Conference of 1919, General Smuts had submitted to the Commission on the League of Nations certain amendments to the original proposal with respect to the "C" Mandate. In those amendments the word "if" had been included in the phrase "as an integral portion". It was not clear why or by whom that word had been introduced. Objections had immediately been raised to its inclusion on the grounds that the original text had been agreed to in detail by the Council of Ten. The word had been deleted. There could therefore be no doubt as to the meaning of the phrase "as an integral portion". The only limitation upon South Africa's full powers was the obligation to carry out the sacred trust conferred upon it by the Mandate. South Africa was doing everything within its power to fulfil its sacred trust, and it had at all times scrupulously observed the injunctions of the Mandate in respect of it.

24. It had been alleged that no notable progress had been made in South West Africa during the thirty-three years of South African administration. Reference had been made to the acute land problem, the absence of secondary schools and training establishments, inadequate health and housing facilities and an absence of self-government for the non-European peoples of the territory. From the time that the Mandate had been conferred until the disappearance of the League, both the South African Government and the South West Africa Administration had kept a scrupulous accounting of the obligations entrusted to them. A full record of their achievements and of the manner in which they had discharged their trust was available for the world to examine in the records of the League of Nations.

25. During much of the period when South West Africa had been subject to the supervision of the Permanent Mandates Commission, it had been in serious financial straits, owing to world economic conditions. Nevertheless, the Administration's record revealed evidence of progress and development which could scarcely have been conceived at the time South Africa had taken over responsibility for the territory. Since 1946, the territory had enjoyed considerable economic prosperity from which the indigenous population had benefited to the full, not only in the strict economic sense, but also in the increased social and public services

which improved financial conditions had made it possible to provide. For example, during 1946 and 1949 expenditure on education for the indigenous population had more than doubled and expenditure on health services and other general services for the indigenous population had increased by about 80 per cent.

26. The rate of increase had increased still further in the past few years. The South African Government was continuing to develop social and other services to the full extent to which technical and other trained personnel were becoming available. The acute land problem was due to the nature of the soil itself, the climate and the agricultural topography of the continent. In South West Africa, land reserved exclusively for occupation by the indigenous population amounted to nearly 19 million hectares, excluding the vast areas of desert and semi-desert, and comprised the best agricultural and pastoral country in the territory. It was occupied by a little over 200,000 inhabitants, which meant that, on an average, approximately 225 acres were available for every man, woman and child. The statement that there were no organized health services in the Native Reserves was completely untrue. He would not go into details, but he would be happy to give any member of the Committee who was interested particulars on the services of the district surgeons and other services in the Native territories maintained either by the Administration itself or with Administration subsidies.

27. With regard to the principle of self-government, in the areas where the greater part of the indigenous population was concentrated, the tribal councils and their headmen were fully responsible for local self-government, for the maintenance of law and order and for the administration of justice in respect of practically all charges other than murder, which could be tried only by the High Court of South West Africa. In the majority of cases, tribal council rule had been substituted for government by the chiefs. It had been suggested that the chiefs or tribal councillors were paid by the Government and were the instruments of the Administration. That was completely inaccurate. The service rendered to the local community was entirely unpaid except in the sense that the community members made traditional or customary contributions in kind to their tribal rulers.

28. Some representatives had doubted the correctness of the claim that, in 1945 when the peoples of South West Africa had been consulted on the future of the territory, over 90 per cent of the population had expressed itself in favour of incorporation into the territory of South Africa. The evidence of that consultation was still available in the records of the United Nations (A/123), if anyone wished to verify South Africa's claim. That evidence showed, among other things, that not only those of European origin had been consulted but also the non-European peoples of the territory.

29. The Syrian representative had referred, if Mr. Jooste was not mistaken, to a statement made by the South African delegation at the time the Assembly had decided to submit the matter to the International Court of Justice for an advisory opinion, to the effect that the United Nations would continue to raise the matter on political grounds no matter what opinion was expressed by the Court. The South African delegation had been referring to a statement to that effect by the Indian representative.

30. Mr. Jooste heartily agreed with the representative of Thailand that persuasion and the force of legal

argument should prevail. He assured him that it had been the South African delegation's consistent endeavour to argue the matter on strictly legal grounds not only in the Fourth Committee but throughout the negotiations with the *Ad Hoc* Committee. He reiterated his delegation's appreciation of the manner in which the *Ad Hoc* Committee had approached its task. His delegation still felt that a measure of progress had been made, which would not have been possible if his delegation had not been prepared to make concessions wherever it could.

31. In that connexion, he emphasized that negotiation required at least some measure of compromise; neither side should be obliged to adopt an entirely rigid attitude, unless of course compromise would involve the surrender of an essential principle. Negotiation on any other basis would be not negotiation but dictation. In evaluating the manner in which the South African Government had endeavoured to meet, wherever possible, the requirements of the United Nations, members of the Committee should also have regard to South Africa's essential requirements and the background against which it was asked to negotiate. Some speakers in the current debate had done what they could to discredit his Government; such statements were not conducive to an atmosphere in which realistic negotiation was possible.

32. The preamble of the draft resolution contained in document A/C.4/L.305/Rev.1 and Add.1 merely repeated the one-sided recital of the Court's opinion to be found in previous Assembly resolutions. In the operative part of the draft resolution the main emphasis was on the contention that the only settlement of the problem satisfactory to the United Nations would be a recognition by the South African Government of full United Nations jurisdiction over the Territory of South West Africa, in the sense, no doubt, that it would henceforth be treated as a United Nations mandate, notwithstanding the fact that the Charter made no provision for a system of United Nations mandates. Furthermore, while ostensibly providing for the continuation of negotiations, the draft resolution limited the terms of reference of the proposed committee to complete and unreserved insistence on the United Nations contentions. In that context, to speak of negotiations was stretching the meaning of the term a very long way indeed. It might have been said of the *Ad Hoc* Committee that it possessed a limited discretion to negotiate, but the new committee had been given a fiat which could only be accepted or rejected by the other party concerned.

33. The Danish representative had referred to the letter from the South African Government (A/929) in which mention had been made of the continuing availability of information in the form of statistics, departmental reports and other governmental publications. The South African Government had merely desired to indicate that its decision not to furnish reports on the administration of the territory was not due to any desire to suppress information on South West African affairs. The statistics, reports and other material referred to were still made public and there was no question of hiding anything. At no time, however, had his Government intended that its letter should be construed as offering specifically to make available to the United Nations as such, in lieu of formal annual reports, the information normally published in governmental publications on South West Africa.

34. The draft resolution must naturally be considered against the background of certain speeches made

by some of its sponsors. For instance, in considering the outcome of the discussions in the Committee, his Government could hardly ignore the statement by the Philippine representative. He hoped that, in coming to a final decision on the draft resolution, the Committee would take into consideration the views which he had expressed.

35. He would vote against the draft resolution contained in document A/C.4/L.305/Rev.1 and Add.1. He would like to ask that a separate vote should be taken on paragraph 12 of that text. He would also vote against the draft resolution contained in document A/C.4/L.306 and Add.1 because in substance it called for the submission of a trusteeship agreement by his Government. He reserved his delegation's right to reply to any statements that might be made during the discussion of the draft resolution.

36. Mr. PACHACHI (Iraq) took issue with the South African representative's remark that the Iraqi representative's statement in the general debate had been intended for propaganda purposes. Needless to say, his delegation's intention had been only to serve the cause of justice, to defend the interests of non-self-governing peoples, and to uphold the authority of the United Nations. The charge of propaganda was an attempt to dodge the main issue and to avoid facing the facts, which constituted an indictment of the policies of the South African Government. If, as Mr. Jooste had stated, that Government's great achievements in South West Africa were on record, he wondered why that Government objected to putting a report on those achievements officially before the United Nations.

37. The CHAIRMAN stated that the general debate was closed and invited comments on the two draft resolutions before the Committee (A/C.4/L.305/Rev.1 and Add.1, A/C.4/L.306 and Add.1).

38. Mr. MENDOZA (Guatemala) said that his delegation, which had taken a keen interest in the question of South West Africa from the outset, had always felt that the Mandates System had been superseded by the Trusteeship System and that the United Nations had succeeded to the supervisory functions of the League of Nations. Although it had regarded Article 77 of the Charter as mandatory, it had bowed to the Court's more restrictive interpretation. It had become convinced of the usefulness of the *Ad Hoc* Committee because the latter, while unsuccessful on the major issues, had at least induced the Government of the Union of South Africa to recognize that it had some international obligations with regard to South West Africa, that a new international instrument should be negotiated to govern its administration of that territory, and that some international agency should supervise that administration. Since there was hope that further negotiations might lead to a just solution which would be in the interests of the territory's indigenous inhabitants, he was in favour of continuing the committee in existence with wider representation and broader powers.

39. He would therefore vote in favour of the fifteen-Power draft resolution (A/C.4/L.305/Rev.1 and Add.1), and hoped that the unanimity of the views of which it was the expression would induce the South African Government to change its attitude in the matter. He would also vote in favour of the other draft resolution (A/C.4/L.306 and Add.1) because he still felt that the best solution would be to place South West Africa under the Trusteeship System.

40. Mr. ESPINOSA Y PRIETO (Mexico) said that he would vote in favour of both draft resolutions.

It was a painful fact that the United Nations, which could not impose its will on States but could only appeal to their conscience, had for years been unable to solve a simple problem because a single Member State had disregarded its recommendation. The constant reiteration of that recommendation was, however, bound to have a moral effect on the Union of South Africa. Since that country believed in racial superiority, he hoped that it would show its superiority by its interest in the welfare of the people under its care and by its readiness to fulfil its international obligations and would thus remove from discussion an item which had appeared on the Committee's agenda year after year.

41. Mr. PIGNON (France) said that his Government unreservedly supported the Court's advisory opinion—but as a whole, and not when mutilated by the selection of some points and the omission of others. The second paragraph of the preamble of the fifteen-Power draft resolution (A/C.4/L.305/Rev.1 and Add. 1) omitted an essential point: that under Chapter XII of the Charter the Union of South Africa was not obliged to place South West Africa under trusteeship. Furthermore, unlike General Assembly resolution 570 (VI), which his delegation had been able to support, the draft resolution in question, and in particular paragraph 12 of the operative part, was in actual contradiction with the Court's advisory opinion. Consequently, to his great regret, he would have to abstain on it. If its paragraphs were voted on separately, he would abstain on some for reasons of pure form: such expressions as "Records with deep regret" and "Notes with concern" would, he feared, do more harm than good.

42. For the same reasons of principle, he would abstain in the vote on the draft resolution in document A/C.4/L.306 and Add.1. His delegation did not disapprove of the ideas contained in that text, but felt obliged to respect the opinion of the Court, which left the South African Government free to decide whether or not South West Africa should become a Trust Territory.

43. His delegation was as anxious as any to protect the interests of that territory's population, and appreciated the efforts of the sponsors of the two draft resolutions, but since no legal or practical solution of the problem was possible without the South African Government's consent, the only way to reach a reasonable settlement was by patient negotiation.

Mr. Rifai (Syria), Vice-Chairman, took the Chair.

44. Mr. DOMINGUEZ (Cuba) said he would vote for the fifteen-Power draft resolution in the hope that the proposed committee would be able to negotiate a successful settlement of the problem on the basis of the Court's advisory opinion. He urged the South African Government to co-operate with the United Nations, since the present impasse was injurious to the prestige of both. The discussion of the question in the General Assembly could not continue forever simply because the Union of South Africa refused to honour its international obligations. He would also vote in favour of the draft resolution contained in document A/C.4/L.306, since it reaffirmed the position taken previously by the General Assembly that the Territory of South West Africa should be placed under international trusteeship.

45. Mr. SPITS (Netherlands) observed that the fifteen-Power draft resolution represented a serious and

sincere endeavour to break the present deadlock by establishing supervisory machinery closely resembling that which had existed under the Mandates System. Unhappily, the proposed committee would in all likelihood not have before it reports from the Mandatory Power, as required under that system; if, as suggested in paragraph 12 (a) of the draft resolution, the committee were reduced to examining reports not intended for consideration by an international body, and possibly even magazine and newspaper articles, it would be unable to do serious work. Furthermore, the words in paragraph 12 (b), "as far as possible" were in contradiction with the premise that the procedure of the Mandates System was to be applied. For those reasons, he would have to abstain on the draft resolution.

46. The draft resolution contained in document A/C.4/L.306 and Add.1 would, because it reiterated recommendations which had been unheeded, have the appearance of an order, and that was incompatible with the very nature of General Assembly resolutions. Moreover, it was inconsistent with the fifteen-Power draft resolution, which indicated another course of action to the South African Government. The Government could not be expected to comply with both draft resolutions. He would therefore be compelled to abstain on the second draft resolution as well.

47. Mr. BOZOVIC (Yugoslavia) would vote for the fifteen-Power draft resolution although it did not fully meet his delegation's views, because he felt that the door should be left open to negotiation. He asked the sponsors whether they would accept the addition to the text of paragraph 10 of the words "and of the international protection afforded by the Charter of the United Nations" and in paragraph 12 (b) the insertion of the words "received by and" before "submitted". He also asked for a separate vote on the phrase in paragraph 6, "though it should not exceed that which applied under the Mandates System"; he would vote against it, since it was out of place in a paragraph which merely stated that supervision should be exercised by the United Nations and which should not enter into the details of the possible contents of a future agreement regulating such supervision.

48. Ato Katama ABEBE (Ethiopia) felt that the Union of South Africa, which alone of the former Mandatory Powers had failed to accept the Trusteeship System, need not fear that by so doing it would expose itself to criticism by other Member States; he was confident that, if it wished, it could acquit itself of its responsibilities as an Administering Authority without giving grounds for criticism. Suggestions made to the Administering Authorities were usually meant to be helpful, and the Union of South Africa might find its task of administration facilitated by them. He appealed to that country's Government to abide by the Charter, which it had helped to draft, and, pending a final solution of the matter, to transmit to the United Nations reports on its administration of South West Africa. He would vote in favour of both draft resolutions.

49. Mr. RIVAS (Venezuela) would also vote for both draft resolutions. The South African representative had asked the General Assembly to make concessions; but the Assembly had already made a great concession by accepting the Court's advisory opinion, which was much more conservative than the views held by many delegations. That representative had quoted paragraph 1 of Article 80, but had omitted paragraph

2, which was directly relevant. Moreover, under Article 77, only the territories mentioned in paragraph c could be placed under trusteeship voluntarily; such action was obligatory with respect to other territories. Since the best solution of the question would be to place South West Africa under trusteeship, he supported with especial enthusiasm the draft resolution contained in document A/C.4/L.306 and Add.1.

50. Mr. APUNTE (Ecuador) said that the normal way of altering the international status of South West Africa would be to place it under trusteeship. All other

Mandatory Powers had followed that course, and there was no reason for instituting a special régime for a single territory. That was the course urged in the draft resolution contained in document A/C.4/L.306 and Add.1. Nevertheless, in order not to close the door to negotiation, an alternative solution was offered in the fifteen-Power draft resolution. The two draft resolutions were thus not inconsistent, and he would vote for both.

The meeting rose at 1 p.m.