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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)**

[Item 36]\*

1. Mr. KHOMAN (Thailand), Chairman of the *Ad Hoc* Committee on South West Africa, introduced the Committee's report (A/2475 and Add.1). In connexion with the statement in paragraph 10 of that report concerning the *Ad Hoc* Committee's opinion that negotiations for an agreement concerning South West Africa could only be undertaken by the United Nations, acting through an agency appointed by and responsible to it, he drew the Fourth Committee's attention to paragraph 20 (iii) of the *Ad Hoc* Committee's report of 1952 (A/2261) stating that the Committee was unable to reconcile with its terms of reference the South African Government's proposal that it should negotiate with the three remaining Principal Allied and Associated Powers and that it found obscure the legal grounds on which authority could be delegated to those Powers, especially in view of the South African Government's statement that it did not recognize any special obligation either to them or to the former members of the League of Nations.

2. He regretted that the negotiations of the *Ad Hoc* Committee pursuant to the instructions of the General Assembly (resolution 651 (VII)) had not helped to settle the question of South West Africa and had not assisted in finding a way to implement the advisory opinion of the International Court of Justice<sup>1</sup> which had been overwhelmingly accepted by the General Assembly in 1950 (resolution 449 (V)). Although he was forced to admit that the *Ad Hoc* Committee had been unable to persuade the South African Government to negotiate on the basis of the Court's opinion, he had pleasure in stating that the negotiations had been conducted throughout without recriminations.

3. Mr. JOOSTE (Union of South Africa) had great pleasure in placing on record his Government's appreciation of the spirit in which its negotiations with the *Ad Hoc* Committee on South West Africa had been conducted. All the members of the *Ad Hoc* Committee had shown his delegation great courtesy throughout

the negotiations. There had originally been serious doubts in many quarters whether, in view of the clearly defined attitude of the Union of South Africa on the one hand and of the United Nations on the other, the negotiations would serve any useful purpose. That had not proved to be the case. While it was true that no final settlement had been reached, he believed that his Government and the *Ad Hoc* Committee had succeeded in finding much common ground.

4. In endeavouring to place his Government's views before the Fourth Committee as frankly and as fully as possible, he would have to refer to certain developments in the United Nations which had made it still more difficult for his Government to settle its differences with the United Nations, but he had no desire to reopen the acrimonious debate that had created an atmosphere in which the settlement of the South West African problem had proved to be well-nigh impossible.

5. His Government's doubts whether the proposed negotiations could possibly serve any useful purpose had arisen from the following considerations which it had not been able to ignore in deciding whether to accept the invitation originally extended to it to meet with the *Ad Hoc* Committee: first, the great divergence between the views held by the South African Government and the United Nations respectively; secondly, the manner in which the South West African issue had dealt with in the United Nations in previous years; and thirdly, the restrictive nature of the *Ad Hoc* Committee's terms of reference.

6. With regard to the first consideration, it would be recalled that from the very outset the United Nations had consistently asked the South African Government to bring the territory under the Trusteeship System. His Government, on the other hand, owing to the special position of the territory, had proposed to incorporate South West Africa into the territory of the Union of South Africa. The proposed incorporation had been supported by over 90 per cent of all sections of the territory's population. While his Government had advised the United Nations at the San Francisco Conference and, for that matter, the League of Nations at the time of its demise, of its plan to incorporate South West Africa, it had had no intention of acting until the United Nations had been fully consulted. That consultation had taken place in 1946, but, owing to certain unfortunate developments in the United Nations during the first session of the General Assembly, an atmosphere had been created which had made an objective consideration of the South African case quite impossible. The Government had decided, in those circumstances, not to proceed with its intention to incorporate but to continue to administer the territory in the spirit of the Mandate. It had therefore continued to observe the spirit of the sacred trust it had assumed under the mandate, without recognizing any formal legal commitments *vis-à-vis* any external authority in regard thereto. The League of Nations had

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

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

disappeared and its authority and functions with respect to the former mandated territories had not automatically devolved upon the United Nations. The United Nations, for its part, had argued that it was the legal heir to those powers and functions and had not been prepared to accept his Government's position. It had continued to urge his Government to accept accountability to the United Nations for its administration of the territory, and it was still asking for a trusteeship agreement, despite the opinion of the International Court of Justice.

7. With regard to the second consideration, he recalled the acrimonious and unfruitful debates which had consistently marred consideration of the matter in the Fourth Committee. The regrettable hostility which had sometimes been displayed and the manner in which his Government's rights as a Member State had, on occasion, been brushed aside had always made it extremely difficult for South Africa to negotiate in a manner which could hold out any hope of success. It was not only the debates on South West Africa which had militated against fruitful negotiation. There had been debates on other matter too—matters which fell within the domestic jurisdiction of his country—which had consistently and deeply shocked South African public opinion. He had referred to those debates in some of his statements to the *Ad Hoc* Committee.

8. With regard to the third consideration, he recalled that at the fifth session of the Assembly (322nd plenary meeting) he had expressed his delegation's fear that the restrictive nature of the terms of reference proposed for the *Ad Hoc* Committee would all but close the door to negotiations, since those terms of reference seemed to hold out little hope of any compromise such as would be essential if a realistic solution were to be found. As the Fourth Committee was aware, that difficulty had continued to tie the *Ad Hoc* Committee's hands and had been one of the major obstacles to a settlement.

9. Other considerations, however, had ultimately led his Government to decide in favour of participating in the proposed negotiations. First, his Government had endeavoured from the outset to co-operate with the United Nations in all matters which, in its view, were of international concern and to play to the best of its ability a full part in the life of the United Nations. Secondly, it had continued most sincerely to desire to settle once and for all the unfortunate differences which existed in the United Nations in connexion with South West Africa. Those considerations were still valid and his Government was still anxious to find some means by which a final settlement could be reached.

10. In the negotiations, the *Ad Hoc* Committee, owing to its interpretation of its terms of reference, had consistently based its attitude on the advisory opinion of the International Court of Justice. It was a legal fact that the Court's opinion was purely advisory in nature and did not have the same status as the verdict of a court of law. Hence, it was not automatically binding either on the United Nations or on the Union of South Africa. Secondly, for reasons which it had already explained, his Government did not agree with many of the views expressed in the Court's opinion, though that did not affect its respect for the Court. His Government had not, therefore, been prepared to subscribe to all the findings of the Court or to accept the opinion *in toto*.

11. In deciding to accept the invitation to negotiate with the *Ad Hoc* Committee, his Government had reali-

zed that if an acceptable and realistic arrangement were to be worked out, both parties would have to make certain concessions. Hence, when his delegation had met with the *Ad Hoc* Committee, it had made it quite clear, that, while its negotiations would be without prejudice to the Government's legal position, it would endeavour, wherever it could, to meet the United Nations' essential demands. At the same time, it had made it clear that there were certain essential requirements on the part of South Africa which would have to be met if an agreement was to be achieved. It was in that spirit and with that object in view that his delegation had submitted certain proposals to the *Ad Hoc* Committee.

12. The International Court in its advisory opinion had divided the international obligations originally assumed by South Africa into two categories, the first relating to the administration of the territory and corresponding to the sacred trust as defined in Article 22 of the Covenant of the League of Nations and in articles 2 to 5 of the Mandate, the second relating to the machinery for implementation.

13. The first category was of fundamental importance and any agreement between South Africa and the United Nations with regard to South West Africa would have depended primarily on agreement in that respect. The South African delegation had therefore felt that it might be possible to find common ground with the *Ad Hoc* Committee on that category of obligations, since the Court held that the sacred trust subsisted, the United Nations desired to ensure its continuance and South Africa was in fact carrying it out.

14. On the other hand, his Government was unable to agree with the view, expressed by the Court and subscribed to by the majority of the United Nations, that South Africa continued to have an international responsibility with regard to the sacred trust. In his Government's opinion, since one of the two parties to the original contractual arrangement had disappeared, the Mandate had lapsed and could no longer be regarded as legally binding.

15. Since his Government had every intention of continuing to carry out the spirit of the sacred trust, it had decided to agree to assume a new international obligation in that respect. It had therefore proposed that a new international instrument should be concluded, reviving articles 2 to 5 of the original Mandate, with minor amendments, and also reviving South Africa's international commitment to carry out the sacred trust. It had felt that that would finally place the legal relationship between the Union of South Africa and the Territory of South West Africa beyond all further doubt.

16. That solution had appeared to commend itself to the *Ad Hoc* Committee, which had, however, also desired that some provisions should be made for international supervision. The South African Government had offered to submit to judicial supervision and to accept in that connexion the compulsory jurisdiction of the International Court of Justice. That proposal, however, had not been regarded as adequate by the *Ad Hoc* Committee and no agreement had therefore been reached on that point.

17. The major difficulty in the negotiations had arisen in connexion with the second point on which agreement had not been reached, viz., who should be the other party to the proposed new instrument. The

original Mandate had been conferred upon the Union of South Africa by the Principal Allied and Associated Powers and confirmed by the League of Nations. Since both the League and the Principal Allied and Associated Powers as a group had ceased to exist, the South African Government had proposed that the instrument should be concluded, for historical reasons, with the Governments of France, the United Kingdom and the United States, on the clear understanding that those three Powers would act as principals and not as agents of the United Nations. The *Ad Hoc* Committee had maintained that any new instrument must be concluded with the United Nations or an agency of the United Nations. That thesis was unacceptable to his Government since, among other reasons, the conclusion of a new instrument with the United Nations would oblige it to accept responsibilities more onerous than those it had assumed under the Mandate. Moreover, the International Court of Justice had not expressed the view that upon the demise of the League South Africa was automatically responsible to the United Nations for the administration of the territory. South Africa could not agree to accept accountability to the United Nations, which had a different membership and structure from the League and in which—owing to the existence of the majority rule in contrast with the unanimity rule of the League—its administration of South West Africa would be subject to the authority and criticism of chance majorities.

18. Although the negotiations with the *Ad Hoc* Committee had reached an impasse, the South African Government was still prepared to consider proposals consistent with the basic concept that the new instrument should be concluded with the three Powers. His Government's suggestions were realistic and should meet the essential requirements of both the United Nations and the Union of South Africa. They were designed to meet the difficulties he had outlined and to ensure that the sacred trust should be revived as legal obligation, that it should be embodied in a new instrument and that the Union of South Africa should reassume international accountability towards the three nations, which would undoubtedly be not less diligent in supervision than any organ of the United Nations. They would also ensure that the sacred trust would be carried out by South Africa's accepting beforehand the compulsory jurisdiction of the International Court of Justice.

19. Since the *Ad Hoc* Committee's terms of reference precluded it from considering the merits of the South African proposal, it was for the Fourth Committee to decide whether the *Ad Hoc* Committee should be authorized to continue negotiations.

20. He hoped the Committee would look at the problem realistically and that with mutual co-operation a final settlement of the question would be reached at the present session.

The meeting rose at 4.15 p.m.