

GENERAL ASSEMBLY

TWELFTH SESSION

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Chairman: Mr. Thanat KHOMAN (Thailand).

AGENDA ITEM 38

Question of South West Africa (*continued*):

- (a) Report of the Committee on South West Africa (A/3626, A/AC.73/L.10);
- (b) Study of legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa: special report of the Committee on South West Africa (A/3625)

LETTER FROM THE REVEREND MICHAEL SCOTT

1. The CHAIRMAN read out a letter dated 30 September 1957 which he had received from the Reverend Michael Scott clarifying a point which had been raised concerning the question of ownership and disposal of African reserve land in South West Africa. The letter stated that all such land was vested in the South African Native Trust, of which the Minister of Native Affairs was the trustee on behalf of the Government of the Union of South Africa. The South West African Native Affairs Administration Act of 1954 provided that land could not be withdrawn from Native reserves without the approval of both houses of Parliament. Provision was also made for the exchange of Native reserve land for other land supposedly equivalent in agricultural or pastoral value. The complicated procedure by which such transfers were effected by the Union Parliament, the Governor-General and the South West African Legislative Assembly was one over which the Africans had no control. It had been reported that the total area of non-European lands had increased from 15,202,324 hectares in 1946 to 21,825,997 hectares by the end of 1952 and that by 1954 a further area totalling 44,413 hectares had been set aside as Native reserve land, but that did not mean that the land in question had been made available for immediate ownership or use by Africans but only that it had been set aside for their use in the future. Factors which should be taken into account in that connexion were the quality of the land involved in transfers and the means by which that quality was assessed, the future growth of the African population

and its needs in the light of the fact that the White population too was increasing, and the question whether or not any consideration was given to the preference of Africans for land which had belonged to them by tradition or which they had improved at the cost of their own labour and financial resources. The most important factor was, however, that the Africans had no means of asserting any rights in land, the disposal of which rested ultimately with the Union Government in conjunction with the all-White Legislative Assembly in South West Africa. In the absence of effective supervision by the United Nations, the occupation or use of land by Africans could be abrogated by legislative process and administrative action over which they had no control and in which they had no voice, as was evident from the instances given by African petitioners of land being taken from them.

GENERAL DEBATE

2. Mr. JAHANBANI (Iran) recalled that in its advisory opinion of 11 July 1950^{1/} the International Court of Justice, while recognizing that the Union Government had full power of administration and legislation of the Territory as an integral portion of the Union, stated that it was bound by the obligations assumed by it when it had accepted the Mandate, namely, to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory. The Court had further stated that the status of South West Africa was that of a Territory under the Mandate of 17 December 1920 and that the Union Government had no competence to modify unilaterally the international status of the Territory but could take such action only with the consent of the United Nations.

3. In annex I of the report of the Committee on South West Africa (A/3626) extracts from statements by South African officials bearing upon the question of the incorporation of the Territory into the Union were quoted. The statement made on 23 April 1956 in the Union House of Assembly by Mr. du Plessis Basson, a member from South West Africa, that the term "mandated territory" had disappeared from all statutes, and the statement of the Prime Minister that South West Africa was no longer a mandated territory were contrary to the assurances given to the United Nations in the past by representatives of the Union Government itself to the effect that it intended to administer the Territory in the spirit of the Mandate. They were likewise contrary to the statement made by the representative of the Union of South Africa at the final session of the League of Nations, that his Government would regard the dissolution of the League as in no way diminishing its obligations under the

^{1/} International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128. (Transmitted to members of the General Assembly by the Secretary-General under cover of document A/1362.)

Mandate, which it would continue to discharge until such time as other arrangements were agreed upon concerning the Territory's future status.^{2/} Thus it could not be stated that the term "Mandate" no longer applied to the Territory of South West Africa. The Union Government itself was unquestionably aware of that fact, as would seem to have been indicated by the statement of the Prime Minister on 21 May 1956 that although the Government did not recognize the rights of the United Nations in the matter it was prepared, even should it one day incorporate South West Africa, to govern it in the spirit of the Mandate.

4. It was clear that the Mandate still existed and neither the Government of the Union of South Africa nor the White population of South West Africa could abrogate it. Even if the Union Government were to incorporate the Territory as a fifth province, the Mandate would still exist until such time as other arrangements were agreed upon between the United Nations and the Mandatory Power. Mr. du Plessis Basson's statement that South West Africa wished to be governed as an integral portion of the Union reflected only the wish of the 15,534 Whites who claimed that the Mandate had lapsed and who constituted less than one-third of the total European population of the Territory. As far as the indigenous inhabitants were concerned, they had had no opportunity whatsoever to express their wishes in the matter.

5. The latest report of the Committee on South West Africa (A/3626, annex I) showed that political, economic, social and educational conditions in the Territory still left a great deal to be desired. The non-European inhabitants had no voice in either the legislative or the executive branch of the Government, since only the European element of the population was represented in the Union Parliament and the Legislative Assembly of the Territory. Although there appeared to have been an increase in the volume of trade, the industries which were contributing to the present relative prosperity of the Territory were European-owned and operated, the indigenous inhabitants participating in them only as unskilled labourers. The relationship between the European minority and the indigenous majority was that of master to servant. It was particularly significant that there was no compulsory education for non-White children, the authorities having stated that they did not consider the population ready for such a step. Surely compulsory education was more important in a country where the overwhelming majority of the population was illiterate than it was in a country which had reached a more advanced stage of development.

6. His delegation appealed to the members of the British Commonwealth of Nations, and particularly the United Kingdom, to call upon the Union of South Africa, as a fellow member of the Commonwealth, to comply with the consistently reiterated resolutions of the United Nations. It maintained that the compulsory jurisdiction of the International Court of Justice, as provided for under the terms of article 7 of the Mandate, offered the only means of bringing South West Africa under effective international supervision.

7. In conclusion, he stressed that to place a people who were not yet able to govern themselves under a

régime characterized by a belief in the supremacy of the White race and in the policy of apartheid was incompatible with the principles upon which both the Mandate and the Charter of the United Nations were based.

8. Mr. SALOMON (Haiti) said that the report of the Committee on South West Africa showed that the situation was constantly deteriorating and that through legislation and extra-legal measures the policy of apartheid was being imposed on every aspect of life in the Territory. Furthermore, although the Territory was governed as a fifth province of the Union it was not on an equal footing with the other four provinces. No economic development programme had been undertaken, conditions of land ownership were precarious and depended on the needs of the European population, the restrictions governing the living conditions, residence and freedom of movement of the vast majority of the population were becoming ever more despotic, and medical and educational services were neglected or non-existent. In short, the situation prevailing in the Territory constituted a violation of the Mandate, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice and the resolutions of the General Assembly.

9. The petitioners whom the Committee had heard had confirmed the findings of the Committee on South West Africa and had warned that the patience of the people of the Territory would one day come to an end. In view of the seriousness of the situation his delegation had hoped that the Secretary-General would find it possible to report on the matter, as requested in General Assembly resolution 1059 (XI), to the current session of the General Assembly. In the circumstances, his delegation wondered if the General Assembly should not appoint an informal mission composed of representatives of three or four Member States having diplomatic relations with the Union Government, such as the United Kingdom and the United States, to proceed to the Union of South Africa and discuss with its Government ways and means whereby the Territory might be placed under the Trusteeship System within a reasonable period of time. Once such a mission had been received in the Union of South Africa it should be able to convince the Union Government of the safeguards which the Trusteeship Council offered. In the sorry event of such a mission failing to achieve positive results, his delegation saw no other recourse than that contemplated by the Committee on South West Africa in part VI of its special report (A/3625). It would be unfortunate if the United Nations were compelled to resort to the extreme of seeking from the International Court of Justice a compulsory judgement, compliance with which would have to be ensured by the Security Council. Nevertheless, it should be remembered that, as Judge Lauterpacht had pointed out in his separate opinion accompanying the judgement rendered by the Court in 1955,^{3/} if a State declined to act upon recommendations of the United Nations it might well find that it was fostering the conviction among other Member States that it was guilty of disloyalty to the principles and purposes of

^{2/} League of Nations, *Official Journal*, Special Supplement No. 194, p. 33.

^{3/} South-West Africa — Voting Procedure, *Advisory Opinion* of June 7th, 1955: I.C.J. Reports 1955, p. 120. (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/2918.)

the Charter and thereby exposing itself to the consequences legitimately following as a legal sanction.

10. Mr. OSMAN (Egypt) said it was not without feeling that he took the floor as the representative of an African State to ask that justice should be done to an African people who had been deprived of its rights. The work of the Committee on South West Africa over the past four years had served a very useful purpose in keeping the intolerable situation in that Territory before the eyes of the world. Its report showed that the international status of the Territory was increasingly threatened by the integration policy pursued by the Mandatory Power. In that connexion it should be recalled that the current claims of the Union Government to full sovereignty over South West Africa were similar to those put forward by it in the days of the League of Nations, which had consistently held that sovereignty was not vested in the Mandatory Power. The United Nations should therefore solemnly condemn those claims and should recommend to the specialized agencies that they should oppose in their respective fields, any measures which the Union Government might take in violation of the international status of the Territory deriving from the Mandate.

11. The report showed further that the administration of the Territory had long been characterized by the most odious features of colonialism based on the supremacy of the White settlers and neglect of the interests of the indigenous inhabitants. The brutal egoism of that policy was manifested at every level. Politically it took the form of despotic rule by the European element of the population over the indigenous inhabitants. Economically it was expressed in the monopoly of the natural resources of the Territory by the Whites and the exploitation of indigenous labour in accordance with what the report described as the deliberate policy of keeping the indigenous inhabitants in an inferior position in the economy. Socially it was reflected in the application of apartheid. The already deplorable situation had become still further aggravated when the administration of Native affairs had been transferred to the Union of South Africa.

12. It had been conclusively demonstrated that the Union Government, in disregarding its obligations as Mandatory Power and in declaring that it no longer considered itself bound by its international commitments, had violated Article 22 of the Covenant of the League of Nations, the terms of the Mandate, from which its authority over the Territory derived, and the Charter of the United Nations, particularly Chapter XI.

13. The International Court of Justice had rendered an unequivocal advisory opinion in the matter and the United Nations, by setting up the Committee on South West Africa, had given the Union Government an opportunity to fulfil honourably and with dignity the obligations which it had assumed in accepting the

Mandate. Having used every means of moral persuasion at its command, the United Nations had finally adopted resolution 1060 (XI) asking the Committee on South West Africa to study what legal measures could be taken to ensure compliance with those obligations. In its special report (A/3625) the Committee on South West Africa had pointed out that in accordance with the terms of article 7 of the Mandate recourse could be had to the compulsory jurisdiction of the International Court of Justice. Surely, however, there were other measures which could be taken under the provisions of the United Nations Charter.

14. At the fifth session of the General Assembly the South African representative had told the Fourth Committee (191st meeting) that by comparison with certain other matters which the United Nations had before it the question of South West Africa was of almost academic interest. Yet the question of South West Africa could not be regarded as being outside the scope of the great events to which the South African representative had alluded, for its solution would be an indication whether the law of the jungle or the principles of the Charter of the United Nations were to prevail in human affairs. Hence it was not simply a matter of the fate of the indigenous inhabitants of the Territory but of the future of Africa as a whole and of the peaceful coexistence of the peoples of all races on that continent. It was the duty of the United Nations to make the Union Government realize that it could not forever rely on its material superiority to stop the inevitable march of progress which was the watchword in Africa today.

15. Mr. EL-DABI (Sudan) said that his delegation felt that countries which, like his own, had only recently attained their independence had a particular obligation to defend the interests of such peoples as those of South West Africa. After reading the special report of the Committee on South West Africa he was convinced that there had been no improvement whatsoever in the situation in that Territory and that the indigenous inhabitants continued to be deprived of the most elementary rights, whether in the political, economic, social or educational field. It was difficult to understand how the Union of South Africa could expect other nations to respect the principles embodied in the Charter of the United Nations when it so flagrantly disregarded the judgements handed down by the International Court of Justice. The prestige and the very existence of the United Nations depended on its ability to help the peoples of the world to realize their democratic aspirations. Mr. Getzen's observation that if the United Nations could not solve the problem of South West Africa the people of that Territory would find other means of asserting their rights was a warning which the Members of the United Nations, in the interests of world peace, would do well to heed.

The meeting rose at 11.40 a.m.