

GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records

Tuesday, 14 October 1958,
at 3 p.m.

NEW YORK

CONTENTS

	Page
Agenda item 39:	
Question of South West Africa (<i>continued</i>):	
(a) Report of the Good Offices Committee on South West Africa	
General debate (<i>continued</i>)	71

Chairman: Mr. Frederick H. BOLAND (Ireland).

AGENDA ITEM 39

Question of South West Africa (*continued*):

(a) Report of the Good Offices Committee on South West Africa (A/3900)

GENERAL DEBATE (*continued*)

1. Mr. ARAMBURU (Peru) recalled that the Peruvian delegation had voted in favour of General Assembly resolution 1143 (XII) setting up the Good Offices Committee on South West Africa, in the conviction that the resolution was in conformity with the principles of the Charter and might lead to an agreement which would be in harmony with the rules of justice and international law. It had considered that the efforts of objective third parties, one of whom was linked to the Union of South Africa by historical ties, would promote an understanding. The Committee's activities had had one concrete result, the resumption of direct negotiations between the Union and the United Nations. Unfortunately, even before the Committee's report (A/3900) could come under discussion, a series of disagreements and misunderstandings had resulted in the Fourth Committee's having to continue its examination of the problem in the absence of the South African delegation.

2. The Peruvian delegation regretted that the Union Government was still not willing to accept the United Nations as the other party to an agreement, but it noted with satisfaction that the Good Offices Committee dismissed any other possibility. It believed that the Good Offices Committee had carried out its task, which was to advise and to reconcile, with skill. The Committee would not appear to have gone beyond its terms of reference in suggesting the possibility of partition, since it had been instructed to propose solutions, but that did not mean that the Peruvian delegation accepted its suggestions without reservation. It could not agree to the dismemberment of a territory, with all the legal and economic consequences of such an action. South West Africa was a political, ethnic and economic whole, the partition of which would be harmful to its inhabitants and a negation of the very purposes of the Mandate. The Mandates System had created a provisional situation, the purpose of which was to prepare territories still in the process of development for the rights and obligations of international life. The basic idea, as set forth in the Charter, was that the interests of the

inhabitants of those territories were paramount. To accept a formula for partition and annexation which would leave part of the Territory in a wretched situation with no possibility of attaining the final objectives of self-government or independence would be failing to observe that principle.

3. The Peruvian delegation considered that the Good Offices Committee, which deserved full confidence, should continue the task entrusted to it by the General Assembly and should seek out with the Union Government other possibilities of agreement with a view to the establishment of international supervision of the Territory in accord with the interests of the inhabitants and the principles of the Charter.

4. Mr. SUMULONG (Philippines) paid a tribute to the members of the Good Offices Committee, whose task had been arduous and whose report showed that there was still a wide gap between the position adopted by the General Assembly and that of the Union of South Africa.

5. The Philippine delegation noted with satisfaction that the Union Government seemed willing at least to recognize the international character of South West Africa and to admit that the Union could not amend that character unilaterally and ought to administer the Territory in accordance with articles 2 to 7 of the Mandate. Article 2 in particular bound the Union to work for the material and moral well-being and for the social progress of the inhabitants. His delegation also noted that the Union Government, in place of an annual report, would agree to communicate information supplied to the Union Parliament and to the Legislative Assembly of the Territory, or, in other words, to give its own version of the situation. It should be noted that those apparent concessions by the Union Government were subject to the condition that its counter-proposals were accepted.

6. He turned next to the points on which the Union disagreed with the United Nations, the first point being the question of the supervisory authority. By recognizing the international character of the Territory and agreeing to submit information annually, the Union Government implicitly accepted a supervisory authority. The fact, moreover, that a proposal for the incorporation of the Territory had been submitted by the Union Government to the General Assembly at its first session^{1/} had been an implicit recognition by that Government that the United Nations constituted the authority in question. If the General Assembly had agreed to the incorporation, the Union would undoubtedly have said that the United Nations was competent to change the status of the Territory. It was to be hoped that the Union Government would not maintain its counter-proposal regarding the three remaining Prin-

^{1/} See A/123.

cial Allied and Associated Powers, for that purpose had already been rejected by the General Assembly in its resolution 749 A (VIII), and was contrary to the 1950 advisory opinion of the International Court of Justice.^{2/}

7. Turning to the possibility of partition and annexation, he noted that the Good Offices Committee had merely drawn it to the General Assembly's attention as something which might provide a basis of agreement but had stated that any proposal to that effect would go beyond the Committee's terms of reference as it would deprive part of the Territory of its international status. The Philippine delegation felt that the General Assembly could not, even in principle, accept that proposal as a basis of agreement. The annexation of the wealthy portion and the placing under trusteeship of the poorer area would inevitably lead to the incorporation of the entire Territory in the Union.

8. The Philippine delegation believed that the partition and annexation of a mandated territory must be rejected. The idea that a guardian could profit in that way from the guardianship entrusted to him was contrary to the notion of a sacred trust which had inspired both the Mandates System and the Trusteeship System; it subordinated the interests of the indigenous inhabitants to those of the Mandatory Power, contrary to the principles of the Mandate, to Article 22 of the Covenant of the League of Nations and to Article 73 of the Charter of the United Nations; and it constituted a rejection of all the General Assembly resolutions requesting that South West Africa should be placed under trusteeship and of the advisory opinions of the International Court of Justice. From the political point of view, to accept such an idea would be to place a premium upon a Member State's defiance of world opinion and of the wisdom and authority of the United Nations and might well mean the end of the Organization. Lastly, it would be a retrograde decision which would run counter to the undying principles of justice, freedom and equality enshrined in the Covenant and in the Charter for the protection of the dependent peoples.

9. Consequently, the Philippine delegation felt that the Good Offices Committee should be asked to continue its discussions with the Union Government with a view to reaching an agreement which would continue to accord an international status to the entire Territory. The agreement should be based on the recognition of the United Nations as the supervisory authority for South West Africa after the dissolution of the League of Nations, a recognition which the Union Government had accorded when it had requested the General Assembly to approve the incorporation of the Territory in the Union. The idea of partition and annexation should be discarded completely as being incompatible with the functions of trustee assumed by the Union Government as the Mandatory Power. The proposal of the Good Offices Committee for the establishment of a South West Africa Council and a South West Africa Mandate Commission (A/3900, paras. 17-21) would seem to be a satisfactory compromise formula which the parties might well study in greater detail on con-

dition that the resulting arrangements would be compatible with the Charter, the Mandate and the advisory opinions of the International Court. Lastly, if the Union Government refused to participate in further discussions on those lines, the General Assembly ought to feel constrained to study the possibility of resorting to the compulsory jurisdiction of the International Court, as prescribed in article 7 of the Mandate, or to any other form of sanction provided in the United Nations Charter for dealing with recalcitrant Member States.

10. U ON SEIN (Burma) traced the historical background of the question, from the First World War to the adoption of resolution 1143 (XII) which had set up the Good Offices Committee. The Burmese delegation had voted against that resolution, not because it was opposed to the principles of negotiation and conciliation, but because of its firm conviction that the Territory should be placed under trusteeship. It believed that the members of the Good Offices Committee, to which it paid a tribute, could not be expected to succeed where the Committee on South West Africa had failed. In any event, the Burmese delegation regretted that the Union of South Africa had again withdrawn from the discussions.

11. The Good Offices Committee recommended to the General Assembly that the problem should be solved by some form of partition, the arrangements for which would be left to the Union Government. The result of such an action, however, would be the annexation of the rich areas of the South and the placing under trusteeship of only the northern regions which were not economically viable. The Burmese delegation could not approve the annexation of any part of the Territory. Contrary to the view of the Union of South Africa that the Mandate had ceased to exist, the Burmese delegation felt that the United Nations was bound by certain rules laid down in the Charter and in the Universal Declaration of Human Rights. The vast majority of the population of South West Africa was far from enjoying equal rights with the inhabitants of the Union of South Africa. The partition plan, as envisaged by the Good Offices Committee, would prevent the United Nations from examining the multi-racial question in South West Africa. The destiny of a mandated territory could not be shared out between the United Nations, on the one hand, and a particular Member State, on the other. If the Union of South Africa refused to recognize the authority of the United Nations, the status of the Territory should be determined by a referendum in which the inhabitants of South West Africa would participate.

12. Mr. FOO (Federation of Malaya) said that, while his delegation appreciated the work of the Good Offices Committee, it was unable to approve of many of the ideas and recommendations set forth in that Committee's report. In its desire to reconcile the Union Government and the United Nations, the Committee had apparently exceeded its terms of reference by making recommendations which were tantamount to concessions and which ignored the opinions expressed by the majority of the United Nations over a period of twelve years. The Committee's terms of reference had instructed it to seek a basis for an agreement which would continue to accord to the Territory of South West Africa an international status, but the Committee's report, if adopted, would modify that status radically.

^{2/} International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128. Transmitted to Members of the General Assembly by a note of the Secretary-General (A/1362).

13. The Federation of Malaya considered that any agreement on the matter should be based on recognition of the international status of the Territory by the Union of South Africa. It regretted that the Union refused to accept the United Nations as a second party to an agreement, contrary to the opinion handed down by the International Court of Justice in 1950 and to the example set by other Mandatory Powers.

14. The Malayan delegation was glad that the Union Government had been prepared to hold discussions with the Good Offices Committee, but it noted with regret that the attitude of that Government had not changed and that it would agree only to acknowledge the international character of the Territory.

15. The United Nations, which had always stood out strongly against the annexation of the Territory, should remain faithful to its resolutions and should not betray the people of South West Africa, who counted upon it to ensure that the sacred trust vested with the Union Government was respected. The Malayan delegation reiterated its faith in the United Nations and its intention to defend the purposes and principles of the Charter. It appealed once again to the Government of the Union of South Africa to co-operate with the United Nations in seeking to arrive at an agreement concerning the Territory which would be based on respect for the principles of the Charter.

16. Mr. RAHNEMA (Iran) regretted the South African delegation's decision not to take part in the Fourth Committee's debates on South West Africa, because that decision might put an end to a last attempt at conciliation, which had been called a new approach to the question. That decision was also regrettable because it meant that the deplorable situation of the people of South West Africa would be prolonged. The report of the Committee on South West Africa (A/3906 and Add.1), which was an excellent document, left no room for illusions on that score and showed that the Union of South Africa, far from carrying out the sacred trust committed to it by the League of Nations, was establishing in the Territory a state of affairs which was contrary to the Mandates System, the United Nations Charter, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice and the resolutions of the General Assembly. There could no longer be any doubt as to the legal situation. The advisory opinions of the International Court had made it quite clear, first, that the status of South West Africa remained that of a territory under an international mandate assumed by the Union of South Africa in 1920; secondly, that the Union was still subject to the international obligations set forth in Article 22 of the Covenant of the League of Nations; thirdly, that the provisions of Chapter XII of the Charter of the United Nations applied to South West Africa, in the sense that they provided a means for placing the Territory under the Trusteeship System; fourthly, that if the Union was not obliged under the Charter to place South West Africa under the Trusteeship System, it could not, on the other hand, unilaterally alter the status of the Territory; and, fifthly, that if, as alleged, the Mandate had ceased to exist, the authority of the Mandatory Power had also ceased. The most logical solution, on which all the members of the Fourth Committee would agree, was that the Union should act like all the other Mandatory Powers and should enter into negotiations with the

United Nations with a view to placing South West Africa under trusteeship.

17. While it was unnecessary to refute once again the fallacious legal arguments that the Union had used to oppose such a solution, it was important to shed light on the real reasons for its refusal. Those lay in the political racist doctrine proclaimed by the Union Government in the form of the apartheid theory, which glorified violence and in the name of which a foreign minority had bent all its efforts to reduce to slavery an indigenous population four times its number. Since the early years of the Mandate, the Union of South Africa had fostered the intention of annexing South West Africa; that intention had been declared by Field-Marshal Smuts at the San Francisco Conference of 1945. Since then, and especially since 1951, that annexation had become increasingly real. The administrative changes that had taken place in 1955 and many laws and decrees had paved the way for annexation. As the first stage in that long-premeditated operation, a *de facto* annexation was being completed without any effective resistance from the international community, whose requests and appeals had for twelve years continued to be in vain.

18. Those were the circumstances in which the General Assembly at its twelfth session had adopted a new approach to the question and, in its resolution 1143 (XII), had instructed the Good Offices Committee to "discuss with the Government of the Union of South Africa a basis for an agreement which would continue to accord to the Territory of South West Africa an international status". In view of the categorical refusal of the Union Government to place the Territory under trusteeship, the Committee, showing a commendable spirit of conciliation, had tried to some extent to restore the Mandate, in order to reduce the Union's obligations to those that it had assumed in 1920. It had been the Union's refusal to accept that solution that had led the Committee to exceed its terms of reference and to seek other solutions. As soon, however, as it had exceeded its terms of reference, the Committee had in fact become a group of private persons engaged in consultations which had no official character, and it would have been advisable for the Committee to indicate, as the Chairman of the Good Offices Committee, Sir Charles Arden-Clarke, had done in his statement at the 752nd meeting, that the points relating to the possibility of partition had not been discussed officially.

19. It should moreover be noted, as Sir Charles Arden-Clarke too had pointed out, that no proposal for partition had actually been made. It was for the Union of South Africa to make such a proposal if it thought it could make one which could be reconciled with the principles of the Charter. It might happen by some miracle that the Union would propose, for example, placing the northern part of the Territory under United Nations trusteeship, while agreeing that the southern part should retain its status as a Mandated Territory. Such a proposal, though it would introduce the dangerous idea of partition, would probably be considered by the General Assembly with all the attention it deserved. It should be noted at once, however, that the General Assembly could not take the initiative in proposing a plan for partition, in any form whatever, which might be difficult to reconcile with the principles of the Charter and with the interests of the in-

habitants of the Territory. In that connexion, he recalled the Reverend Michael Scott's opinion that the partition proposal, first put forward by the Anti-Slavery Society and almost entirely changed subsequently, had already in its original form been absolutely unacceptable to the peoples concerned. It would dispossess them of the richest part of their national territory. The Government of the Union of South Africa had declared that "South West Africa by itself could not be economically viable" (A/3900, para. 41). If it was not economically viable as a whole, it was scarcely likely to be so if it was deprived of the greater part of its wealth.

20. There was thus no justification for the partition of the Territory in any form whatsoever. In accepting partition the international community would be perpetuating the old colonial policy of drawing artificial and arbitrary lines between peoples of the same origin and the same culture, encouraging an internationalization of apartheid and destroying the very solid legal, moral and humanitarian basis of the United Nations case. It would be condoning an act of annexation, lending unprecedented encouragement to aggression and sanctioning a flagrant violation of the most sacred principles of international law and, indeed, of any kind of law.

21. For twelve years, the United Nations had done useful work by establishing the Committee on South West Africa, by requesting the advisory opinions of the International Court of Justice so that the legal aspects of the problem might be clarified, and by establishing the Good Offices Committee, which had served to reveal the position of the Union Government in its true light. While awaiting a counter-proposal from that Government, the Assembly might invite the Committee on South West Africa to continue its work and its study of legal action that might be taken to ensure respect for the obligations assumed by the Union. The Assembly might also express itself more clearly concerning the basic premises which it thought necessary for any compromise or any attempt at conciliation. It might take note of the intransigent attitude of the Union, which had rejected all the proposals that the Good Offices Committee had made under its terms of reference, and it might even invite the Union to submit as soon as possible a counter-proposal based on the aforesaid premises.

22. In conclusion, he said that his delegation would maintain its conciliatory attitude, but would oppose any compromise which was contrary to the principles of the United Nations and to the sacred trust which the peoples had vested in the Organization. No setback should cause the United Nations to abandon its struggle for the independence and well-being of all peoples.

23. Mr. DMITERKO (Ukrainian Soviet Socialist Republic) said that the withdrawal of the representative of the Union of South Africa showed once again that the Union Government had no respect for the United Nations. Its absence would not prevent the voice of the General Assembly from reaching the inhabitants of South West Africa, who were being denied fundamental human rights by the Union Government and who were waiting for help from the United Nations. The representative of India had been quite right in asking whether civilization was on the side of those who asked for liberty or of those who were trying to suppress it. The Union of South Africa called itself the rampart of white civilization in Africa, but how could one speak of civilization with reference to a system

which prohibited the indigenous inhabitants, constituting 90 per cent of the total population of the Territory, from participating in political activity of any kind, a system which ensured the supremacy of one race over another on the basis of the theories of fascist Germany and, finally, had made possible the extension, in 1957 and early 1958, of the cruel policy of apartheid, a policy the Government of the Union of South Africa hypocritically described as a means of improving the way of life of the non-European population. The indigenous inhabitants were being forced into reserves, and those who lived in the segregated parts of urban areas did not even have the right to pass through the European districts in order to reach their place of employment. Such a system was a disgrace to the twentieth century. The Union of South Africa could not expect the United Nations to use its prestige as a cover for the policy of apartheid, the partitioning of the Territory and the annexation of the richest part of the Territory. Reason, honour and justice forbade the United Nations to accept such a solution.

24. At the twelfth session, the Ukrainian delegation had voted against the establishment of the Good Offices Committee because it had considered the Committee, by its very composition, incapable of helping to solve the question of South West Africa in the spirit of the Charter. That conclusion had now been confirmed by events. The Committee proposed that consideration should be given to the practicability of partitioning the Territory and of joining its southern part to the Union. It was most regrettable that a United Nations committee had put forward an idea so contrary to earlier decisions of the General Assembly and so utterly inconsistent with the interests of the inhabitants of the Territory. The Union of South Africa had long been trying to annex the Territory. In May 1957 the Prime Minister of the Union had declared that, with the disappearance of the League of Nations, there was no organization which had any say over South West Africa, except the Union of South Africa; that his Government did not therefore recognize the United Nations' claim that it was entitled to intervene in the affairs of South West Africa (A/3906, para. 49). It was therefore natural that the Union of South Africa had welcomed the idea of a partition which would enable it to annex a part of the Territory with the help of the United Nations. The Good Offices Committee had served the cause, not of the United Nations or the inhabitants of the Territory, but of the racist settlers of the Union of South Africa. It tried by every means to secure the adoption of that idea and invited the General Assembly to go back on its principles and its earlier decisions. Paragraph 52, sub-paragraph (7), of the Committee's report showed that the Committee was wholly in favour of partition.

25. In the view of his delegation, that proposal could in no way serve as a basis of agreement. The United Nations had always opposed annexation. No one, whatever his views on the status of South West Africa might be, could deny that the Union of South Africa had no rights over the Territory. Partition of the Territory and the incorporation of its southern part in the Union would mean the end of South West Africa as an economic entity. The solution was to place South West Africa under United Nations trusteeship. There was no other solution, for there was no way of holding back the march of history.

26. Mr. ZIKRIA (Afghanistan) observed that his country was guided by feelings of friendship for all nations.

It regretted the existence of opposing blocs and military alliances, which caused mistrust among States, and it looked at international problems with absolute impartiality. The Afghan Government and people were convinced that the aspirations of oppressed peoples were legitimate, and they were resolved to give those peoples strong support in their struggle for freedom and independence.

27. Colonialism was no longer justified in the present day and age. Great changes had occurred in the world, and every people hoped to fulfil the promise of its own spiritual capabilities. Self-determination, the product of centuries of experience, was the best way of satisfying the needs of humanity, and the Afghan delegation hoped that the Fourth Committee would be guided by that principle whenever it was called upon to decide the fate of any people.

28. With regard to the problem of South West Africa, his delegation had always hoped that a solution acceptable to all could be arrived at by peaceful means. It was with that hope that it had supported the resolution establishing the Good Offices Committee. Unfortunately, the Union Government had failed to appreciate that effort at conciliation and, after a discussion on a secondary matter, had decided not to attend the debate on the Committee's report. It was to be hoped that the Union Government would reconsider its decision.

29. The arguments advanced by the Union in its effort to prove that it was not required to accept United Nations supervision had already been refuted. The Mandates System had been a democratic institution which reconciled the right to self-determination with continuing administration of certain territories whose inhabitants were not yet ready for self-government. The Union of South Africa claimed to be the heir of the League of Nations, but the people of South West Africa were not to be considered a transferable legacy and could not be deprived of their inalienable and infeasible right to freedom and independence.

30. The Good Offices Committee had been reproached for exceeding its terms of reference. It should be

pointed out, however, that the General Assembly had not divested itself of its power of final decision and that the mere fact of considering the possibility of partitioning the Territory did not do injury to the purposes and spirit of the Charter. Partition might even be compatible with the principles of the Charter, provided that the people of South West Africa were given an opportunity to express themselves freely on all practicable solutions. The Afghan delegation was prepared to support any draft resolution which gave due consideration to the right of self-determination.

31. Mr. FERNANDEZ (Costa Rica) said that he did not favour the suggestion of the Good Offices Committee because, by inviting the Government of the Union of South Africa to undertake an investigation of the practicability of partitioning South West Africa, the General Assembly would appear to approve the principle of such partition. That would constitute a complete renunciation by the United Nations of the view which it had hitherto held and which was consistent with justice and reason and with the United Nations Charter. The Union Government had always refused to submit to the authority of the United Nations and to apply its resolutions. By approving the suggestion of the Good Offices Committee, the General Assembly would be accepting the idea of annexation and would be compromising its moral position.

32. Moreover, the interests of the inhabitants must not be overlooked. They had given notice that they were opposed to a partition of the Territory, which would mean the end of all their hopes. The richest part would be joined to the Union while the small area which would be placed under trusteeship was marked by social and economic instability. Even before the partition line was drawn, there was every indication that the policy of segregation would not end and equality of rights for all races would not be established.

33. For those reasons, the delegation of Costa Rica was categorically opposed to the solution advanced by the Good Offices Committee.

The meeting rose at 5.25 p.m.