



QUESTION OF SOUTH WEST AFRICA

Report of the *Ad Hoc* Committee on South West Africa to the General Assembly

I. GENERAL

1. The General Assembly, on 20 December 1952, adopted resolution 651 (VII) whereby it requested the *Ad Hoc* Committee on South West Africa, established by General Assembly resolution 570 A (VI) of 19 January 1952, to continue on the same basis as stated in that resolution, and to report to the Assembly at its eighth session. It will be recalled that the *Ad Hoc* Committee, consisting of the representatives of Norway, Syria, Thailand, the United States of America and Uruguay, was to "confer with the Government of the Union of South Africa concerning means of implementing the advisory opinion of the International Court of Justice" and was further authorized, "as an interim measure, and pending the completion of the negotiations with the Government of the Union of South Africa, and as far as possible in accordance with the procedure of the former Mandates System, to examine reports on the administration of the Territory of South West Africa as well as petitions and any other matters relating to the Territory that may be transmitted to the Secretary-General".

2. The *Ad Hoc* Committee continued to meet under the chairmanship of Mr. Thanat Khoman (Thailand).

3. Since the adoption by the General Assembly of resolution 651 (VII) the Committee has held four meetings, all of which were private. The Committee's decision to hold private meetings was prompted by the same considerations which had prevailed during the first two years of its existence, namely, that in negotiations with the Union of South Africa, its task would be facilitated by holding private meetings. The representative of the Union of South Africa met with the Committee at its 38th meeting, held on 25 June 1953. At its 39th meeting on 10 September 1953, the Committee decided to release the summary records of its meetings on 21 September 1953.

4. At the request of the Committee, the Chairman, by a letter dated 27 January 1953, informed the representative of the Union of South Africa that the *Ad Hoc* Committee had decided to hold itself in readiness for new negotiations with the Government of the Union and to invite that Government to co-operate with the Committee in its work, taking into account the statements contained in paragraphs 20-24 of the Committee's report to the General Assembly at its seventh session (A/2261). The letter further stated that the Committee expressed the hope that the Union Government would notify the Committee as to the date when negotiations could be usefully undertaken.

5. By a letter dated 3 February 1953, the deputy permanent representative of the Union of South Africa informed the Chairman of the *Ad Hoc* Committee that the contents of his letter had been conveyed to the Union Government and that he hoped to address

a further communication to the Chairman when the observations of the Government had been received.

6. At its 37th meeting on 9 June 1953, the *Ad Hoc* Committee was informed by the Chairman that the representative of the Union of South Africa had orally expressed a desire to meet with the Committee (see paragraphs 9 to 12 below).

7. At its 39th meeting, on 10 September 1953, the *Ad Hoc* Committee adopted its report to the General Assembly unanimously and decided to release it on 21 September 1953.

II. ACTIVITIES OF THE *Ad Hoc* COMMITTEE WITH REGARD TO PARAGRAPH 5 OF GENERAL ASSEMBLY RESOLUTION 570 (VI)

8. At its 37th meeting on 9 June 1953, the *Ad Hoc* Committee reaffirmed that, in its future negotiations with the Union of South Africa, it would be guided by the principle that it could not entertain the discussion of any proposals which did not from the very outset make provision for the supervision of the administration of the Territory of South West Africa by the United Nations, as envisaged in the advisory opinion of the International Court of Justice.

9. At the first part of its 38th meeting on 25 June 1953, the representative of the Union of South Africa, after restating his Government's position with regard to the question of South West Africa (see A/AC.49/SR.38/part I), inquired whether it was the requirement of the Committee that the Union Government should assume its obligations to the United Nations with regard to the administration of the Territory, and not to the three Principal Allied and Associated Powers as principals. He stated that he wished to ascertain whether the Committee as a whole had decided, formally, to reject this proposal itself, which had been constantly under discussion throughout the negotiations. He further observed that the Committee had never formally rejected his Government's proposals on their merits, but had always taken its stand on the terms of reference of the Committee; he hoped that the reply would be forthcoming at last and that, in the event that it was unfavourable, the Committee would state its reasons.

10. At the third part of the 38th meeting, after consultation with the members of the Committee, the Chairman informed the representative of the Union of South Africa that, with regard to the proposal that a new instrument should be negotiated between the Union of South Africa and the three former Principal Allied and Associated Powers, inasmuch as the Union of South Africa wished those Powers to act as principals and not as agents of the United Nations, the Committee felt that the proposal did not provide the means for implementing the advisory opinion of

the International Court of Justice and did not recognize the principle of supervision of the administration of South West Africa by the United Nations. He also stated that the Committee was, therefore, unable to accept the proposal as a basis for a detailed discussion. It was the view of the Committee that negotiations for a new international instrument could be undertaken only by the United Nations, acting through an agency appointed by and responsible to it.

11. In connexion with the Chairman's statement, the representative of the Union of South Africa observed that the Committee's views were based on the opinion of the International Court of Justice. That opinion was, however, advisory and the Union Government had not accepted it; the Court said nothing of who the second party to the agreement should be; and it did clearly stipulate that the degree of supervision by the United Nations should not exceed that which had obtained under the Mandates System. His Government held that it was well-nigh impossible to devise any arrangement whereby it would be accountable to the United Nations for its administration of South West Africa, without extending its obligations. To give only a few examples: under the Mandate, the Union of South Africa had obligated itself to guarantee free entry into and movement within the Territory to the missionaries of all Members of the League of Nations; any Member State of the United Nations, under the Committee's counter-proposal¹ would have the right to summon the Union before the International Court of Justice, which had compulsory jurisdiction; lastly, the Covenant of the League had provided that all decisions of substance had to be taken by unanimous agreement of the Members present, thus virtually endowing each Member with the veto. He failed to see under what system and by what means it would be possible to come to an arrangement whereby the Union Government would be accountable to the United Nations and safeguard the vital principle of unanimity. The United Nations acted in virtue of the Charter and could not agree to measures which would be in contravention of the Charter. Those were by no means the only objections his Government could raise; but he wondered how the Committee proposed to cope with them.

12. In reply, the Chairman stated that the Committee must abide by its terms of reference and seek means of implementing the Court's opinion. The Committee could not discuss how that could be done until the South African Government had accepted the principle involved, at which time the Committee would endeavour to carry out its instructions faithfully within the limits set by the Court.

13. Upon the request of the representative of the Union of South Africa that the Committee's views should be sent to him in a formal communication, the Chairman, after consultation with the other members of the Committee, sent to the permanent representative of the Union of South Africa to the United Nations a letter, dated 10 July 1953. This letter reads as follows:

"I have the honour to inform Your Excellency that the *Ad Hoc* Committee on South West Africa has authorized me to transmit to you a statement concerning the discussion at its 38th meeting on 25 June 1953.

¹ See *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 38, document A/1901, paragraph 27.

"2. At that meeting Your Excellency, after re-defining the previous position of the Government of the Union of South Africa on the question of South West Africa, addressed to the Committee the following question: 'Is it the requirement of this Committee that the Union Government should assume its obligations to the United Nations with regard to the administration of the Territory, and not to the three Powers (France, the United Kingdom and the United States of America) as principals?'

"3. After consultation with the members of the Committee, I stated on behalf of the Committee that the Committee felt that the proposal submitted by the representative of the Union of South Africa did not provide the means for implementing the advisory opinion of the International Court of Justice and did not recognize the principle of supervision of the administration of South West Africa by the United Nations. The Committee was therefore unable to accept the proposal as a basis for a detailed discussion. It was the view of the Committee that negotiations for a new international instrument could be undertaken only by the United Nations, acting through an agency appointed by and responsible to it.

"4. On the suggestion of Your Excellency that the position of the *Ad Hoc* Committee with regard to this question be communicated officially, I have again consulted with the members of the *Ad Hoc* Committee and have now the honour to transmit to you the following considerations:

"5. In view of the fact that the General Assembly, by resolution 449 (V) of 13 December 1950, accepted the advisory opinion of the International Court of Justice with respect to South West Africa, it should be recognized that any committee established by that body must respect that acceptance. In this connexion, it will be recalled that the first Committee on South West Africa established by the same resolution was specifically instructed 'to confer with the Government of the Union of South Africa concerning procedural measures necessary for implementing the advisory opinion of the International Court of Justice'.

"6. The General Assembly, in reconstituting the *Ad Hoc* Committee on South West Africa by resolution 570 A (VI) of 19 January 1952, requested the Committee 'to confer with the Government of the Union of South Africa concerning means of implementing the advisory opinion of the International Court of Justice'. The *Ad Hoc* Committee is aware that on several occasions the representative of the Union of South Africa has expressed the view that, under this new resolution, the Committee was given broader terms of reference than the first Committee. Without wanting to embark on an analysis of the significance of the terms of reference of the present Committee, the Committee is clearly obliged to direct its negotiation in such a manner as to find means to implement the advisory opinion of the International Court of Justice.

"7. In this connexion, it will be recalled that General Assembly resolution 651 (VII) of 20 December 1952 requested the *Ad Hoc* Committee to continue on the same basis as stated in General Assembly resolution 570 A (VI).

"8. On the basis of these clear instructions of the General Assembly, the *Ad Hoc* Committee formulated

its attitude regarding the proposal of the Government of the Union of South Africa concerning the question of South West Africa. This attitude was stated in paragraphs 20 and 21 of its report to the General Assembly (A/2261). The Committee wishes to recall, in particular, the following observations appearing in sub-paragraphs (iii) and (iv) of paragraph 20:

"(iii) The Committee was unable to reconcile the proposal of the Union Government to negotiate a new agreement with the three remaining Principal Allied and Associated Powers with the principle stated in the first observation. In addition, the Committee found obscure the legal grounds on which powers could be delegated to the remaining Principal Allied and Associated Powers for the negotiation of such an agreement, particularly in view of the statement of the representative of the Union of South Africa that the Union Government did not recognize any special obligation either to the remaining Principal Allied and Associated Powers or to the former Members of the League of Nations.

"(iv) The Committee finally stated that, in its opinion, negotiations for an agreement could only be undertaken by the United Nations through an agency appointed by and responsible to the United Nations.

"9. The *Ad Hoc* Committee is firmly of the opinion that it must be guided by the principle that it cannot entertain any proposal which does not envisage the implementation of the advisory opinion of the International Court of Justice. In the circumstances, therefore, the *Ad Hoc* Committee finds the proposal submitted by the delegation of the Union of South Africa unacceptable.

"10. The Committee took note of the statement of Your Excellency at its 38th meeting, on 25 June 1953, that the advisory opinion of the International Court of Justice was impossible of implementation. The Committee recalls, in particular, that you stated that the Union Government could not accept accountability towards the United Nations without assuming obligations which they did not have in the past. By way of illustration, you observed that article 5 guaranteed free access to and free movement in the Territory to missionaries of all States. Would the Committee be prepared to recommend that only those missionaries who belong to former Members of the League of Nations should have access? You further observed that, in terms of the new instrument, every Member of the United Nations would have the right to take the Union of South Africa to court under the compulsory jurisdiction of the International Court. You also referred to the rule of unanimity, provided for in the Covenant of the League of Nations, which in actual practice gave South Africa the veto. You inquired how, under what system and by what means, would it be possible to come to an arrangement where the Union Government would be accountable to the United Nations and safeguard that very vital principle of unanimity. Would the Committee be prepared to recommend to the General Assembly that its recommendations concerning South West Africa be taken by a unanimous vote?

"11. With regard to this question, the Committee wishes to state that it appears premature at this stage of the negotiations, when fundamental problems of principle are not yet agreed upon, to make any pronouncement concerning the possibility of de-

tailed implementation of the advisory opinion of the International Court of Justice. The *Ad Hoc* Committee wishes to state, however, that just as it must be bound by the Court's opinion in regard to the question of the basic principle of United Nations supervision over the administration of the Territory of South West Africa, it will be similarly bound in its negotiations with the Government of the Union of South Africa by all other provisions of that advisory opinion. In this connexion, the Committee is ready to give full consideration to that part of the advisory opinion which reads: 'The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions'. The Committee wishes to emphasize that in its negotiations it will always be guided by the principle that the Government of the Union of South Africa shall not undertake obligations exceeding those obtaining under the mandate agreement for the Territory of South West Africa.

"12. The *Ad Hoc* Committee earnestly hopes that the Government of the Union of South Africa will agree to the basic principle to which the Committee must adhere so that the negotiations concerning South West Africa may be brought to a satisfactory solution".

14. By a letter dated 4 September 1953, the deputy permanent representative of the Union of South Africa informed the Chairman of the *Ad Hoc* Committee as follows:

"I have the honour to refer to your letter TRI 132/1/06 of 10 July 1953, and to state that the views of the *Ad Hoc* Committee on the proposal of the Government of the Union of South Africa concerning the question of South West Africa have been noted.

"The position of the Union Government has already been clearly stated to the Committee by their delegation. It will be recalled that throughout the discussions the following basic elements were emphasized:

"(a) The Union Government maintain that the Mandate in respect of South West Africa has lapsed and that while they continue to administer the Territory in the spirit of the trust they originally accepted, they have no other international commitments as the result of the demise of the League. Nevertheless, in order to find a solution which would remove this question from the United Nations, they are prepared to enter into an arrangement with the three remaining Allied and Associated Powers, namely, France, the United Kingdom and the United States.

"(b) The Union Government's responsibilities in regard to South West Africa should not in any way exceed those which they assumed under the Mandate.

"In regard to (a) above, it will be recalled that the idea of an agreement with the three Powers has been fundamental in all the Union's proposals. From the outset, the South African delegation urged the Committee to define its attitude towards this proposal. The South African delegation on numerous occasions throughout the negotiations sought clarity on the Committee's views on this point.

"It is true that in the Chairman's letter TRI 132/2/01 of 28 September 1951, it was stated that it was the unanimous conclusion of the Committee that it could not accept the suggestion of the Union Government that the Committee should reconsider its previous decision that the South African proposal did not fall within the scope of the Committee's terms of reference as defined by the relevant resolution of the General Assembly. At the sixth session of the General Assembly, however, the Committee's terms of reference were made less restrictive and the Union Government therefore hoped that in the changed circumstances the Committee might find itself able to consider the proposal for the conclusion of an agreement with the three Powers.

"Although the Committee's position in regard to this proposal was again dealt with in its report submitted to the seventh session, the Union representative indicated during the latest discussions why the Union Government were still not certain whether the idea of an agreement with the three Powers had been finally rejected. It is with regret that the Union Government now take note of the Committee's final stand in this matter.

"As far as (b) is concerned, the Union Government note that the Committee would always be guided by the principle that the Government of the Union of South Africa shall not undertake obligations exceeding those obtaining under the original Mandate agreement. In the opinion of the Union Government, this position could not be maintained if an agreement with the United Nations, as envisaged by the Committee, were entered into. Examples of how the Union's obligations would be increased were given in my letter of 20 September, 1951,² in reply to your letter TRI 132/1/01 of 11 July 1951.

"The Union Government are prepared to consider proposals which fall within the framework of the two basic elements set out above. They are unable to agree with the view of the *Ad Hoc* Committee that it is premature at this stage to test any principle or proposal to see whether in fact it could be put into operation without increasing the Union's existing obligations.

"In conclusion, the Union Government wish to emphasize that the insistence of the United Nations to interfere in the internal affairs of the Union and the lack of impartiality and understanding with which South African problems are viewed by some Members, are factors which are having a grave effect on public opinion in the Union *vis-à-vis* the United Nations. A continuation of such a state of affairs can hardly be conducive to the creation of an atmosphere for finding a solution to these problems."

15. At its 39th meeting on 10 September 1953, the Committee considered this letter and instructed the Chairman to send to the deputy permanent representative of the Union of South Africa a letter dated 14 September 1953, which reads as follows:

"1. On behalf of the *Ad Hoc* Committee on South West Africa, I have the honour to acknowledge your letter dated 4 September 1953, restating the position

of the Government of the Union of South Africa with regard to the question of South West Africa.

"2. The Committee notes that your Government continues to be prepared only to consider proposals for the solution of the question of South West Africa which fall within the framework of two basic elements, namely:

"(a) That the Union Government are prepared only to enter into arrangements with the three Principal Allied and Associated Powers and not with the United Nations, and

"(b) That the Union Government's responsibilities in regard to South West Africa should not in any way exceed those which they assumed under the Mandate.

"3. The position of the Committee with regard to both points has been stated on several occasions throughout the negotiations, covering a period of almost three years. The Committee has constantly reiterated that it was bound to insist on the implementation of the advisory opinion of the International Court of Justice relating to the Territory of South West Africa, as was called for in both General Assembly resolutions on this subject.

"4. The Committee notes the statement in your letter that the South African delegation on numerous occasions throughout the negotiations sought clarity on the Committee's views regarding the Union's proposal to enter into negotiations with the Principal Allied and Associated Powers. In this connexion, it should be recalled that

"(a) As early as the 7th meeting of the Committee, on 9 July 1951, the Committee informed the Union's representative that it was adhering to the principle that 'an agreement could be negotiated which could be entered into under the authority of the United Nations'.

"(b) By letter dated 11 July 1951, the Chairman of the *Ad Hoc* Committee, transmitting the Committee's counter-proposal to the representative of the Union of South Africa, stated, *inter alia*:

"The Committee carefully examined certain concrete proposals made by the Union representatives suggesting, in particular, an agreement based on article 2-5 of the Mandate, which would be negotiated and contracted between the Union and the remaining Principal Allied and Associated Powers (France, the United Kingdom and the United States) and confirmed by the United Nations. The proposal included a suggestion for implementation by means of "judicial supervision" through access to the Court in cases of alleged non-compliance.

"The Committee, while appreciative of this effort on the part of the Union, feels that an agreement on this basis not only would go beyond its terms of reference but would in its substance be unlikely to gain the desired acceptance of the General Assembly, with the result that the question would remain unsettled'.

"(c) At its 29th meeting on 29 October 1952, the Chairman of the Committee informed the representative of the Union of South Africa, *inter alia*, that the Committee was unable to reconcile the proposal of the Union Government to negotiate a new agreement with the remaining Principal Allied and Associated Powers with the principle of supervision

² This letter was reproduced in the report of the *Ad Hoc* Committee on South West Africa to the General Assembly at its sixth session, see *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 38, document A/1901, paragraph 32.

of the administration of the Territory of South West Africa by the United Nations as envisaged in the advisory opinion of the International Court of Justice. It was then also stated that, in the opinion of the Committee, negotiations for an agreement could only be undertaken through an agency appointed by and responsible to the United Nations.

"(d) In its report to the General Assembly (A/2261), the Committee restated its attitude in paragraph 24.

"(e) In my letter of 27 January 1953, inviting the Government of the Union of South Africa to co-operate with the Committee in its work, specific reference is made to the Committee's view as stated in paragraphs 20 to 24 of the Committee's report to the General Assembly (A/2261).

"5. With respect to the Union Government's attitude that 'its responsibilities in regard to South West Africa should not in any way exceed those which they assumed under the Mandate', the Committee should like to state that it has always been guided by the opinion of the International Court of Justice, namely, that 'the degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations' and that 'these observations are particularly applicable to annual reports and petitions'. The Committee does not agree with the Union of South Africa that it would be necessary to deviate from this principle if the Union Government were to enter into negotiations with a view to implementing the advisory opinion of the International Court of Justice. Unfortunately, negotiations towards the implementation of this principle were never undertaken because it was impossible to reach agreement on this basis.

"6. The Committee regrets that its negotiations with the Government of the Union of South Africa could not be successfully concluded. It had hoped that, by further negotiations, the Government of the Union of South Africa would see its way clear to negotiate on the basis of the Court's opinion. In this connexion, the Committee wishes to recall the statement of the representative of the Union of South Africa made to the Committee at its 23rd meeting on 18 September 1952, when he stated, *inter alia*, that:

"He hoped the Committee would recognize that the extent of common ground was indeed great and that it could serve as a basis for successful negotiations. If those negotiations progressed in a satisfactory manner, his Government would be prepared to move to some extent from the position it had taken the previous year on the one outstanding point of difference'. This statement gave the Committee the hope that the possibility for an agreement might have resulted from further negotiations, but this hope, for the reason stated, was not realized.

"7. I should like to assure you, nevertheless, that as long as the Committee's mandate continues to exist, the Committee is ready and willing to consult further with the representative of the Union of South Africa on the basis of the Committee's position, as restated in my letter of 10 July 1953.

"8. As the General Assembly is about to reconvene I should like to inform you that the Commit-

tee is obliged to release, at an early date, its report to the General Assembly."

III. ACTIVITIES OF THE *Ad Hoc* COMMITTEE WITH REGARD TO PARAGRAPH 6 OF GENERAL ASSEMBLY RESOLUTION 570 (VI)

17. In the course of its 39th meeting on 10 September 1953, the Committee considered its responsibilities with regard to paragraph 6 of General Assembly resolution 570 (VI).

18. With regard to the authorization given by the General Assembly to the Committee to examine reports on the administration of the Territory of South West Africa, the Committee was again unable to comply with the General Assembly's instruction because no such reports were submitted by the Government of the Union of South Africa.

A. *Communications received in 1951*

19. With regard to the authorization given by the General Assembly to examine petitions and any other matters relating to the Territory which might be transmitted to the Secretary-General, the Committee recalls that, in 1951, it had received ten communications relating to South West Africa. In this connexion, the Committee draws attention to paragraphs 29 to 32 of its report to the seventh session of the General Assembly (A/2261).

B. *Communications received in 1952 from sources outside the Territory of South West Africa*

20. In 1952, the Committee received six communications relating to South West Africa. In this connexion, the Committee draws attention to paragraphs 33 to 37 of its report to the seventh session of the General Assembly.

C. *Communications received in 1953 from sources within the Territory of South West Africa*

21. In 1952, the Committee received three communications relating to South West Africa from the Territory itself. In this connexion, the Committee draws attention to paragraphs 38 to 40 of its report to the seventh session of the General Assembly.

D. *Communications received in 1952-1953 from sources outside the Territory of South West Africa*

22. Since its last report to the General Assembly, the *Ad Hoc* Committee received and examined seven communications relating to South West Africa. The communications were:

(i) Communication from the Reverend Michael Scott, dated 6 November 1952, addressed to the Chairman of the Fourth Committee of the General Assembly, enclosing three letters from Chief Hosea Kutako, dated 27 October 1952, addressed respectively to the Secretary-General, to the Secretary for South West Africa, Windhoek, and to the Prime Minister of the Government of the Union of South Africa.

(ii) Communication from the Reverend Michael Scott, dated 7 December 1952, addressed to the President of the General Assembly, enclosing, *inter alia*, a statement of the Joint Action Council of African and Indian Congresses.

(iii) Communication from the Reverend Michael Scott, dated 9 December 1952, addressed to the Secretary-General.

(iv) Communication from the Reverend Michael Scott, dated 15 December 1952, addressed to the Chairman of the Fourth Committee enclosing a copy of a letter of the same date addressed to Mr. Jooste, Ambassador of the Union of South Africa to the United States of America.

(v) Communication from the Reverend Michael Scott, dated 18 December 1952, addressed to the Chairman of the *Ad Hoc* Committee on South West Africa, enclosing copies of the communications referred to in (iv) above.

(vi) Communication from the Reverend Michael Scott, dated 23 December 1952, addressed to the Chairman of the *Ad Hoc* Committee on South West Africa, enclosing the following:

(a) Letter from Chief Hosea Kutako, dated 15 December 1952, addressed to the Reverend Michael Scott.

(b) Letter from Chief Hosea Kutako, dated 8 December 1952, addressed to the Secretary-General (see appendix VII).

(c) Letter from the Secretary for South West Africa, dated 24 November 1952, addressed to Chief Hosea Kutako.

(vii) Communication from the Reverend Michael Scott, dated 15 March 1953, addressed to the Secretary-General, enclosing a memorandum entitled "South Africa and the International Court of Justice—Possibilities of Compulsory Jurisdiction on South West Africa" and a letter, dated 1 January 1952, addressed to the Chairman of the Fourth Committee.

23. In connexion with the communications (ii) and (iv) above, the *Ad Hoc* Committee noted that, in the course of the 308th meeting of the Fourth Committee of the General Assembly, part of these communications were brought to the attention of that Committee.

24. In the case of each of the seven communications listed above the *Ad Hoc* Committee decided:

(a) To accept the communications, as far as they relate to the Territory of South West Africa, as petitions;

(b) In accordance with the procedure of the former Mandates System, to transmit the petitions to the Government of the Union of South Africa for comment; and

(c) To include the petitions in its report to the General Assembly (see appendices I to VII below).

25. By a letter dated 14 September 1953, the Committee transmitted the petitions listed in paragraph 22 to the Government of the Union of South Africa for comment.

E. Communications received in 1952-1953 from sources inside the Territory of South West Africa

26. Since its last report to the General Assembly, the Committee received and examined two communications relating to South West Africa from the Territory itself. They were:

(i) Communication from Chief Hosea Kutako, dated 8 December 1953, addressed to the Secretary-General.

(ii) Communication from Chief David Witbooi, dated 1 June 1953, addressed to the Chairman of the *Ad Hoc* Committee on South West Africa.

27. The Committee considered the above-mentioned communications at its 39th meeting on 10 September 1953. The Committee realized on the one hand that, in accordance with the procedure of the Permanent Mandates Commission of the League of Nations, petitions sent through any channel other than the Mandatory Government were returned to the signatories with the request that they should resubmit them in accordance with established procedure. On the other hand, the Committee, being aware of the attitude of the Government of the Union of South Africa, expressed in letters dated 8 and 25 April 1952 (see A/2261, paragraphs 30 and 31), decided to transmit these communications to the General Assembly (see appendices VIII and IX) and also to the Government of the Union of South Africa. By a letter dated 14 September 1953, the Committee transmitted the communications listed in paragraph 26 to the Government of the Union of South Africa.

Appendices

Appendix I

THE AFRICA BUREAU

69 Great Peter Street,
London, S.W.1
6 November 1952

The Chairman,
Fourth Committee,
United Nations,
New York

Dear Sir,

I have today received a communication from Chief Hosea Kutako, of the Herero tribe in South West Africa, dated 27 October 1952 from Windhoek, South West Africa, and I believe he has communicated with the Secretariat directly.

I should be grateful if I could be given an opportunity of making an oral statement before your Committee

when it comes to its consideration of the item on its agenda dealing with South West Africa.

Yours truly,
(Signed) Michael Scott

ANNEXES TO APPENDIX I

Enclosure A

P.O. Box 1034,
Windhoek,
27 October 1952

The Secretary-General,
United Nations Organization,
New York
Sir,

This serves to inform you that I still maintain that South West Africa be placed under the International Trusteeship System of the United Nations.

Rev. Michael Scott will continue to act as the Spokesman for the Herero tribe.

Please find attached copies of the letters to the Secretary for South West Africa and one to the Prime Minister of the Union Government of South Africa.

I again repeat that we are looking forward to the dawning of that day when Champions of peace and fair play will conquer.

Yours sincerely,
(Signed) Chief Hosea KUTAKO

Enclosure B

P.O. Box 1034,
Windhoek,
27 October 1952

The Secretary for South West Africa,
Government Buildings,
Windhoek

Sir,

I received your letter dated 22 October 1952 Ref. No. A.406/4/3284.

Please transmit the attached letter to the Prime Minister of the Union Government of South Africa.

I remain, Sir,
Yours truly,
(Signed) Chief Hosea KUTAKO

Enclosure C

P.O. Box 1034,
Windhoek,
27 October 1952

The Right Honourable Dr. Malan,
Prime Minister for the Union
Government of South Africa,
Prime Minister's Office,
Union Buildings,
Pretoria
Sir,

Thanks for the letter which I received from the Secretary for South West Africa on the instructions from your Office.

Please inform me the reasons for the refusal of my visa and passport facilities as I mentioned that my visit overseas is purely a religious matter.

Are there any limitations in South Africa and South West Africa hindering the inter-exchange of religious problems?

I am and was under the opinion that we as Christians foster Christian brotherhood and that is only possible if we are in close contact not only through communications but through personal contact.

Kindly review and reconsider your decision as you are a member of the Christian family in Christ of which I am a member.

Trusting that this letter will appeal to the Prime Minister's Christian feelings,

I remain, Sir,
Yours truly,

(Signed) Chief Hosea KUTAKO

P.S. As I am old and sick I wish also to get treatment in Switzerland on account of the climate of Switzerland.

Appendix II

General Theological Seminary,
175 Ninth Avenue,
New York,
7 December 1952

The President of the General Assembly,
United Nations,
New York

Dear Mr. President,

It seems evident from the report of the *Ad Hoc* Committee on South West Africa that the Union Government is not yet prepared to implement its international and moral obligations with respect to South West Africa, particularly with regard to the supervisory responsibility of the United Nations towards this Mandated Territory.

If these negotiations in closed session are to be still further continued the Africans who have appealed to the United Nations will be anxious that their voices should be heard while their future is still being decided and that their own representatives from South West Africa should be present.

I would call your attention to a letter which I believe has been received by the Secretary-General from Chief Hosea Kutako dated at Windhoek 27 October 1952³ which repeats his former requests that a Commission from the United Nations should visit the Territory and hear their views. So far all attempts by them to obtain passports have failed and I am still being prohibited from returning there.

During the six years in which this matter has been considered and resolutions have been passed by the

United Nations, the International Court's advice has been given and negotiations pursued, increasingly discriminatory legislation has been introduced in the Union and South West Africa. Increasingly severe measures have been resorted to in order to suppress the growing resistance of the non-European people in South Africa. Under these circumstances the negotiations which have been protracted behind closed doors by the Union Government must appear to the African people as far removed from them and rather remote from the sufferings which they are being made to endure.

I feel bound, therefore, on behalf of those who asked me to represent them, to appeal to the United Nations now to assume permanently its obligations towards this Mandated Territory and the people who are its wards. Until the desired co-operation of the Union Government is obtainable the United Nations can, as far as possible, fulfil its own obligations in the matter by establishing machinery for the examination of all available information and petitions concerning the Territory, and by reconstituting the *Ad Hoc* Committee on South West Africa, as permanent mandate commission of the United Nations.

While a United Nations Commission has now been established, in terms of a resolution passed in plenary session on 5 December 1952, to study the racial situation in South Africa, a further study could be made by the Committee on South West Africa of the extent to which the racial policies pursued in the Union are being applied in the Mandated Territory or could be applied under South African sovereignty without any form of true international supervision. In this connexion, it may be that the Fourth Committee would wish to examine some evidence on the general situation

³ See appendix I.

in South Africa of which South West Africa is being administered as an integral part. I am, therefore, enclosing herewith a copy of a statement submitted by the Joint Action Council of the African National Congress and the South African Indian Congress to the Chairman of the *Ad Hoc* Political Committee. This statement was submitted by Professor Z. K. Matthews, an African from the Union of South Africa who is a member of the Executive of the African National Congress and is at present in New York as lecturer in World Christianity at the Union Theological Seminary. Attached also is a copy of a letter from him which was circulated in the *Ad Hoc* Political Committee, as document A/AC.61/L.14, on 19 November 1952, explaining that "official pressure" was being brought to bear on him not to accept an invitation to appear before the United Nations and enclosing the statement of the Joint Action Council referred to above.

If no one from among the petitioners from South West Africa is able to be present at this session when the Fourth Committee considers this item on its agenda, I should be prepared to make an oral submission if the Committee desires this and its time permits.

There is need for some clarification, inasmuch as Mr. Eric Louw, South African Minister for Economic Development, has publicly accused me of Communism. He has also reproached the United States authorities for an "unfriendly act" in granting me a visa to attend the United Nations in connexion with this matter, stating without qualification that I was formerly a member of the Communist Party.

There is at present no international criminal court of the United Nations independent of any particular State to which one can appeal and can tell the whole truth about such an allegation without danger of victimization for oneself and one's associates. Common justice surely demands that there should be such a properly constituted court to which those accredited to the United Nations can appeal when such charges are made against them. I feel the need of such at present in order to clear those whom I represent in South West Africa of any suspicions which may be attached to them and may obstruct their movements, to remove any suggestion of blame from the United States authorities in connexion with my visa, and also in order to ease myself of a burden which has obstructed me and has interfered with the fulfilment of my vocation as a priest of the Anglican Church.

The difficult question of incrimination of oneself and one's associates is complicated by incompatible legislation and by varying definitions of Communism in different States. In South Africa, for example, the Suppression of Communism Act, which is retroactive in scope and applies penal sanctions on account of past associations and activities, defines Communism now as "any doctrine or scheme which aims at the encouragement of feelings of hostility between the European and non-European races". Recently a magistrate in South Africa, convicting some accused non-Europeans under this act is reported to have called attention to the difference between "statutory Communism" and that which is normally understood by Communism.

If the International Criminal Court which is proposed in the Legal Committee is established, consideration should be given to the cases of individuals in this position who have appealed to the United Nations or are accredited to it.

Meanwhile I should be grateful to the United Nations if an appeal could be made to the South African Government to rescind the prohibition order against me or to allow me to return to South West Africa to report to those who asked me to come to the United Nations as Chief Hosea requested in his letter to the Secretary-General, and to allow me to face there any charges that may be preferred against me by Mr. Eric Louw or the Minister concerned. Allegations of sedition or treason have tended only to inflame resentment which the cold logic of the law might help to assuage and even to make way for a better understanding of the motives of those who have appealed to the United Nations and of what it has been attempting to do.

In any case the matters upon which I came to the United Nations are now being dealt with through the recently appointed Commission on the racial situation in South Africa and through the work of the Fourth Committee. I feel confident that the United Nations will not abandon its jurisdiction in the matter of South West Africa, and that if consultation with South West Africans is required this could be done directly with them when possible. It seems now time for me to return and to try and give some account of what is being attempted here to help bring about a just and peaceful solution of these problems within the world order which the United Nations is striving to create.

I should mention that opportunities of training and study are now being offered to South West Africans in Britain and in America at Lincoln University, and some of their expenses provided. It now remains only to secure passport and visa facilities for them. In this I trust that the good offices of the United States Institute of International Education may assist.

May I through you, Sir, thank the United Nations and the members of the Fourth Committee for their courtesy to me and thus to those Africans who, in their enforced absence, I have represented; for the access granted me to the United Nations in spite of difficulties during the past five years; for the facilities accorded me as an observer for the International League for the Rights of Man; and for the patient hearings granted me by the Fourth Committee.

Yours faithfully,
(Signed) Michael Scott

Copy to the Secretary General for favour of reference to the Legal Committee.

Copy to the Chairman of the Fourth Committee.

Enclosures (2):

Document A/AC.61/L.14 of 19 November 1952.
Statement of the Joint Action Council of African and Indian Congresses, Box 2948, Johannesburg.⁴

⁴ Note by the Secretariat: This statement is in the files of the Secretariat and may be examined upon request.

Appendix III

General Theological Seminary,
175 Ninth Avenue,
New York,
9 December 1952

The Secretary-General,
United Nations,
New York

Dear Mr. Trygve Lie,

I should be most grateful if you would kindly convey the enclosed copy of a letter on the subject of South West Africa⁵ to the Legal Committee for its consideration in connexion with the proposal to establish an International Criminal Court.

I believe there are many who like myself feel the need for an international court to which individuals accredited to the United Nations can appeal when charges of sedition, subversive activities or Communism are made against them by any Member State. Some of the circumstances of a particular case are referred to in my letter but there must be many others for whom common principles of justice demand that there should be a recognized legal process, independent of any particular State or group of States, whereby such accusations can be properly tried.

Like many others I shall await the outcome of the Committee's deliberations on the judicial aspects of the matter with more than personal concern because I feel that the fate of many who look to the United Nations for justice may be bound up in the decision regarding the establishment of such an international court open to appeal by individuals. I should be grateful for information on the matter.

Yours faithfully,

(Signed) Michael SCOTT

Observer,
International League for the Rights of Man,
756 Seventh Avenue,
New York

Appendix IV

General Theological Seminary,
175 Ninth Avenue,
New York,
15 December 1952

ANNEX TO APPENDIX IV

General Theological Seminary,
175 Ninth Avenue,
New York,
15 December 1952

The Chairman,
Fourth Committee,
United Nations,
New York

Dear Sir,

Since writing my letter of 7 December,⁶ there has been issued an addendum to the report of the *Ad Hoc* Committee on South West Africa which expresses the hope "that when the discussions are continued in the General Assembly these remaining differences can be narrowed down to a complete agreement".

Under these circumstances I would beg through you to reiterate my appeal to be allowed to return to South West Africa to consult with those who asked me to come here in the sincere belief that this might contribute towards such an agreement by clearing up any misunderstandings for which I may have been responsible, to give some account of what has been done here, and to face any charges that may be preferred against me. I am making this appeal also through the South African Government's Ambassador, Mr. Jooste.

Yours truly,
(Signed) Michael SCOTT

His Excellency the Ambassador
of the Union of South Africa,
Permanent Delegation to the United Nations,
655 Madison Avenue,
New York

Dear Mr. Jooste,

May I, through you, make a further plea that the prohibition order against me may be rescinded and that I may be allowed to return to South Africa. I should like to be able to talk matters over with those in South West Africa who asked me to come to the United Nations, and also to face there any charges that may be preferred against me.

I do hope this request will be understood. Many charges have been made against me by the Minister for Economic Development and others and I should like to have an opportunity of telling the whole truth about the matter and of submitting myself, humanly speaking, to the judgment of the court and clearing of suspicion, if any, those against whom there are no grounds for reproach.

The courts now have adequate power to deal with charges of fomenting racial conflict, or complicity in Communism, or of treason; and if I am willing to the judgment of the court, then surely these allegations can be removed from the sphere

⁵ See appendix II.

⁶ See appendix II.

of passion and prejudice and brought within the sphere of justice, reason and the orderly processes of law.

There are matters which are above the law, and I still hope that on these, in spite of political differences, there may eventually be more accord. It may be that this could be assisted by allowing those matters which are within the law to be dealt with

by the law. And I make this appeal to you as the representative of a country to which I owe very much.

With respect,

Yours truly,

(Signed) Michael Scott

Appendix V

General Theological Seminary,
175 Ninth Avenue,
New York,
18 December 1952

Chairman of the *Ad Hoc* Committee
on South West Africa,
United Nations,
New York

Dear Sir,

I should be grateful if you would consider the matters referred to in my communications of 7 and 15 December⁷ which, during the Fourth Committee's debate, the Chairman said would be sent on to your Committee. I enclose copies of them for your convenience.

I was glad to note that the information and petitions previously conveyed to your Committee were included in its report to the General Assembly. It is not clear whether the matters referred to in these were considered by your Committee and if this was not the case I hope they will also be given consideration when your Committee reconvenes.

I trust that before the eighth regular session of the General Assembly concludes dealing with the subject, full consideration will be given to the wisdom of enabling representatives of the indigenous peoples of South West Africa themselves to be present and, if possible, for their voices to be heard before any final settlement of the matter is reached.

Meanwhile, it seems clear from your Committee's report that an opportunity is now open to the three Principal Allied and Associated Powers, namely

Britain, France and the United States, whose special interests South Africa recognizes, to make some firm proposition which would be compatible with their own obligations and those of the United Nations in this matter, as well as the obligations of the Union of South Africa.

I am forwarding for your information copies of the enclosures contained in my letters referred to above (see A/2261, page 92) namely:

1. A.AC.61/L.14, 19 November 1952;

2. Statement of the Nation Action Committee of the African National Congress and the South African Indian Congress, P.O. Box 2948, Johannesburg, dated 4 November 1952.⁸

After the present Assembly session, I should be obliged if communications could be addressed to me at the Africa Bureau, 69 Great Peter St., London, S.W.1.

Yours truly,

(Signed) Michael Scott

Enclosures:

(a) Letter from the Reverend Michael Scott, dated 15 December 1952, addressed to the Chairman of the *Ad Hoc* Committee on South West Africa (see appendix IV).

(b) Letter from the Reverend Michael Scott, dated 15 December 1952, addressed to Mr. Jooste, Ambassador of the Union of South Africa to the United States of America (see appendix IV).

⁷ See appendices II and IV.

⁸ Note by the Secretariat: This enclosure is in the files of the Secretariat and may be examined upon request.

Appendix VI

General Theological Seminary,
175 Ninth Avenue,
New York,
23 December 1952

Chairman of the *Ad Hoc* Committee
on South West Africa,
United Nations,
New York

Dear Sir,

Enclosed herewith please find communication dated 15 December 1952 with enclosures, which I received from Chief Hosea Kutako on 23 December 1952.

Yours truly,

(Signed) Michael Scott

ANNEXES TO APPENDIX VI

Enclosure A

P.O. Box 1034,
Windhoek,
15 December 1952

My dear Reverend Scott,

I received your letter of 27 November 1952, together with the report of the *Ad Hoc* Committee on South West Africa, and the documents containing the statements on the *apartheid* policy in South Africa for which I thank you.

As regards the proposal made by the Union Government that it should report to the three Powers, Britain, France and the United States, and not to the United Nations, I wish to inform you that we object to that proposal, as we believe that the United Nations as an international organization is the

only instrument which is competent to restore happiness to us, as well as to perform the work that has been neglected by the Union Government in South West Africa.

The reports on the administration of South West Africa should therefore be examined by the United Nations or an instrument appointed by and responsible to the United Nations.

As the new body who has been proposed by the Union Government is to be independent of the United Nations, we believe that it would not be of advantage to us. I am still investigating the wage rates in the Territory and will inform you as soon as possible. Attached please find copies of a letter and cable sent to the United Nations as well as a copy of a letter received from the Secretary for South West Africa in which I was informed that my application to go to England had been refused.

My tribe and I are very grateful for what you are doing for us.

I am,
Yours very sincerely,
(Signed) Hosea KUTAKO

Enclosure B

Letter from Chief Hosea Kutako, dated 8 December 1952, addressed to the Secretary-General (see appendix VII).

Appendix VII

69 Great Peter St.,
London, S.W.1.
15 March 1953

The Secretary-General,
United Nations,
New York

Dear Mr. Trygve Lie,

I enclose herewith a memorandum on the subject of South West Africa dealing with the possibility of a further reference to the International Court of Justice for its compulsory jurisdiction in this question under article 7 of the Mandate.

It is felt that the hands of the *Ad Hoc* Committee on South West Africa, whose negotiations have now been protracted over a long period, would be greatly strengthened by the judgment of the Court.

I should be grateful for anything you could do to further this endeavour and would appreciate it if you would forward one of the enclosed copies to the Chairman of the *Ad Hoc* Committee on South West Africa.

Yours sincerely,
(Signed) Michael SCOTT

ANNEX TO APPENDIX VII

Part I

SOUTH AFRICA AND THE INTERNATIONAL COURT OF JUSTICE—
POSSIBILITIES OF COMPULSORY JURISDICTION ON SOUTH WEST
AFRICA

Michael Scott
Negotiations at the United Nations

The *Ad Hoc* Committee on South West Africa appointed by the United Nations at its fifth session has now been negotiating with South Africa for more than two years without being able to reach any substantial agreement. The only points of agree-

Enclosure C

Office of the Administrator,
Windhoek,
24 November 1952

Headman Hosea Kutako,
Box 1034,
Windhoek

Greetings,

With reference to your letter of 27 October 1952, covering a letter addressed to the Prime Minister of the Union of South Africa in regard to your application for a passport, I have been requested by the Secretary for External Affairs, Pretoria, to inform you that the Union Government have given careful consideration to your application for passport facilities to enable you to proceed overseas to participate in religious activities, but regret that they are unable to accede to your request on these grounds.

As regards your request for passport facilities to enable you to receive medical treatment in Switzerland, I am requested to inform you that the Government are prepared to consider your application if a satisfactory medical certificate to this effect is submitted.

Any proposal of such application on these grounds would, however, be subject to your giving written assurance that you will not make use of your overseas visit to receive medical treatment for the purpose of participating in any form of political or public activity.

Greetings,

(Signed) J. NESER
Secretary for South West Africa

ment are that the "sacred trust" should be continued; that the compulsory jurisdiction of the International Court should be recognized but that a "new instrument" should be negotiated.

South Africa is prepared to agree that there should be "some form of supervision" and that information on the administration of South West Africa should be supplied. South Africa has not been able to agree with the *Ad Hoc* Committee on what the form of supervision should be, or how this should be exercised or by whom. She has disputed the right of the United Nations to receive reports and petitions as recommended by the International Court of Justice (see the *Ad Hoc* Committee's report (A/2261) and the advisory opinion of the International Court of Justice of 11 July 1950).

The South African Government's representative stated to the Committee that it was "his Government's intention to supply information annually to the three Powers concerned (Britain, France and the United States) provided they were prepared to act as the second party to the agreement and that the new instrument would be approved by the United Nations (paragraph 16, United Nations document (A/2261, page 5)). It was further suggested that the three Powers with which the new instrument would be negotiated would act as principals and not as agents and that the obligation which the Union of South Africa would assume towards them would not stem either from the original mandate or from their former status of Principal Allied and Associated Powers of the First World War but from the new instrument and from it alone".

While the jurisdiction of the International Court is recognized the Committee reported that the form of judicial supervision by the International Court of Justice which the Union of South Africa was prepared to accept failed to meet the requirements laid down in the opinion of the Court which had been accepted by the General Assembly.

Advisory opinion of the International Court of Justice

The advisory opinion of the International Court of Justice given in its report of 11 July 1950 may be summarized as follows:

(a) South West Africa is still under the International Mandate assumed by South Africa (as a member of the British Commonwealth) after the First World War.

(b) South Africa is not competent alone to modify the international status of the Territory. This can be done only with the consent of the United Nations.

(c) South Africa has an obligation to submit reports and transmit petitions concerning South West Africa to the United Nations.

(d) Whilst South Africa is not legally obliged to place the Territory under the Trusteeship System, the provision of Article 12 of the United Nations Charter provides a means whereby South West Africa may be brought under the Trusteeship System.

(e) The "degree of supervision" to be exercised by the General Assembly should not exceed that which applied under the Mandates System and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions.

Having recognized that there is no legal obligation on South Africa to place South West Africa under the Trusteeship System, the *Ad Hoc* Committee on South West Africa was appointed by the General Assembly to examine reports and petitions and to negotiate a settlement in accordance with the advisory opinion of the Court. This specified that "the General Assembly of the United Nations is legally qualified to exercise the functions previously exercised by the League of Nations with regard to the administration of the Territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it" (page 137).

Thus it would appear that there is "fundamental disagreement on how supervision of the administration of South West Africa by the Government of the Union of South Africa should be carried out".

Hereros' petition renewed

Following the report of the *Ad Hoc* Committee, Chief Hosea Kutako of the Herero tribe in South West Africa cabled and wrote to the Secretary General of the United Nations on 8 December 1952 as follows:

I hereby wish to inform you that our wish is to put South West Africa under the direct supervision of the United Nations but not under any other independent instrument. We strongly object to the proposal made by the Union Government to appoint Britain, France and the United States to be the new instrument to whom the reports on the administration of South West Africa should be sent. It is our wish that the reports on the administration of South West Africa should be examined by the United Nations or an instrument appointed by and responsible to the United Nations. As we have been refused to send our own delegation to the United Nations to be present, we again ask the United Nations to send an impartial commission to South West Africa to see the conditions under which we are forced to live as well as to obtain information in regard to our desires. Hoping that the United Nations will consider sending the long desired impartial commission.

I am,

Yours faithfully,

(Signed) HOSEA KUTAKO

In defiance of international law and order

Meanwhile, during the two years that these negotiations have been protracted since the advisory opinion of the Court was given, increasingly onerous legislation has been passed in the Union, culminating in the Public Safety Act and the Criminal Law Amendment Act imposing any two of three penalties, namely, flogging, imprisonment and fines for any "organized resistance against the laws of the Union" and making these laws applicable in South West Africa. This "draconic legislation" as it has been described in the *London Times* (21 February 1953) surely constitutes a violation of the Mandate and the sacred trust of civilization reposed in the Union of South Africa in its administration of that Territory.

The Capetown correspondent of the *London News Chronicle* wrote of these Bills, while they were still being debated

in the Union House of Assembly, in the *News Chronicle*, 4 February 1953:

The Public Safety Bill gives the Minister of Justice wide powers to declare a state of emergency and legislate by proclamation suspending any law deemed inconsistent with the regulations.

The Criminal Law Amendment Bill prescribes heavy penalties for protesting against laws, and clause one states:

"Whenever any person is convicted of an offence which is proved to have been committed by way of protest, or in support of any campaign against any law, or in support of any campaign for repeal or modification of any law, or variation or limitation of the application or the administration of any law, the court convicting him may, notwithstanding anything contrary in any other law contained sentence him to

"(a) A fine not exceeding £300, or

"(b) Imprisonment not exceeding three years, or

"(c) Whipping not exceeding ten strokes, or

"(d) Both such fine and imprisonment or both such fine and whipping or both such imprisonment and whipping."

The incitement clause provides even heavier penalties for "any person who

"(a) In any manner whatsoever advises, encourages, incites, commands, aids or procures any other person or persons in general, or

"(b) Uses any language or does any act or thing calculated to cause any person or persons in general to commit an offence by way of protest against a law, or in support of any campaign against any law, or in support of any campaign for the repeal or modification of any law or the variation or limitation or the application or administration of any law, shall be guilty of an offence."

The penalties here include a fine of £500, five years' imprisonment and ten strokes.

Ex-Justice Feetham, in an article closely examining the Public Safety Bill, concludes:

"The Bill needs drastic amendment to make its provisions tolerable".

The United Party in Parliament accepted both Bills in principle but proposed amendments to give Parliament power to keep a check on the actions of the Minister. All the amendments were rejected.

Despite the United Party's acceptance, the small Labour Party and the 200,000-strong Torch Commando are opposing both Bills, and the Churches, led by Dr. G. H. Clayton, Archbishop of Capetown, are refusing to "maintain silence in the face of a law which seems to infringe Christian principles".

In a leading article of 4 February 1953, the *London News Chronicle* wrote:

"It would be a pale understatement to describe as reactionary the Bill which the South African Government has now produced in what seems to be an effort to bludgeon its critics into silence. For this measure, introduced by one whose title is Minister of Justice, seeks to impose upon South Africa a tyranny which has more in common with medieval trials for witch-craft than with any modern notion of human freedom.

"The Government's aim is to make it an offence throughout South Africa to protest against any law or to incite anyone else to protest.

"You must not criticize any law. You would be liable to three years' imprisonment, or a £300 fine or ten lashes for any two of these) if you did. You must not advise, encourage or aid anyone else to criticize any law, or use 'any language calculated . . . to cause' such incitement. You would be liable for that to five years' imprisonment, a £500 fine and fifteen lashes.

"Anybody who is in the company of a protester against a law when the 'offence' is committed will be presumed guilty until he proves his innocence. And if protesters or inciters to protest do not pay their fines within forty-eight hours their property may be seized.

"What state would Britain be in if, by some nightmare mistake, we were ever to find legislation like this on our Statute Books?"

"You could not grumble then about the income-tax: you would be protesting against a law, and you could expect to be imprisoned or fined or whipped for it.

"You would have to be careful not to stand near a man who was taking a poor view of anything: it might turn out that he had been protesting against a law, and you would be held guilty of association with him until you had proved your innocence.

"You could expect to be muzzled and bound. And that promises to be the condition in which the South Africans will find themselves unless the Minister of Justice should fail to get the Government's Criminal Law Amendment Bill passed—or unless, if it be passed, constitutional machinery enables the Supreme Court to declare the Act invalid and so end this excursion back to the Dark Ages."

Both these Bills have now become Law in South Africa, and there is no legal procedure within the framework of South African Law whereby their constitutionality can be challenged.

From South Africa itself has come an urgent call for support in the campaign against oppressive race legislation. The Reverend Trevor Huddleston, Superior of the Anglican Community of the Resurrection in South Africa appealing to Christian Action in England writes: "I would urge with all my strength that you mobilize every person of standing in England to condemn what is happening out here, particularly the two new Acts of tyranny". (Church of England Newspaper, 6 March 1953).

The High Court of Parliament Act which was enacted by the present Government in 1952, has undermined the Act of Union which was the constitutional basis on which the Union of South Africa as a State and member of the British Commonwealth was entrusted with the Mandate by the Principal Allied Powers to administer South Africa "as an integral part of the Union".

The South West Africa Act gives the European population of South West Africa six representatives in the South Africa House of Assembly, while the non-Europeans making nine-tenths of the population are given no representation at all. They are represented by one Senator in the Upper House who must be white and is nominated by the Government.

Compulsory jurisdiction now needed

A world renowned authority on international law, though wishing to remain anonymous, has given it as his considered opinion that the compulsory jurisdiction of the Court could now be sought with regard to the continuation of the original Mandate. The repeated postponements of negotiations and their inconclusive character appear to many as a cynical disregard of the questions of humanity and justice which are involved in this matter. It would surely assist the General Assembly of the United Nations, when it next comes to consider this question at its eighth session, if the judgment of the Court on the points at issue were before it.

If a former member of the League of Nations were to initiate proceedings at the International Court to secure compulsory jurisdiction of the question, it would be possible for an inquiry to be instituted into all legislation recently enacted by South Africa and made applicable in South West Africa. Alternatively, the inquiry instituted by the General Assembly at its seventh session could be extended to include South West Africa and its findings made available to the Court before judgment is given.

Dealing with the compulsory jurisdiction under article 7 of the Mandate, Sir Arnold McNair, one of the judges of the International Court, in a separate opinion published with the advisory opinion stated:

"Although there is no longer any League to supervise the exercise of the Mandate, it would be an error to think that there is no control over the Mandatory. Every State which

was a Member of the League at the time of its dissolution still has a legal interest in the proper exercise of the Mandate. The Mandate provides two kinds of machinery for its supervision—judicial, by means of the right of any Member of the League under article 7 to bring the Mandatory compulsorily before the Permanent Court, and administrative, by means of annual reports and their examination by the Permanent Mandates Commission of the League.

"The judicial supervision has been expressly preserved by means of Article 37 of the Statute of the International Court of Justice adopted in 1945:

"'Whenever a treaty of convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.'

"This article effected a succession by the International Court to the compulsory jurisdiction conferred upon the Permanent Court by Article 7 of the Mandate; for there can be no doubt that the Mandate, which embodies international obligations, belongs to the category of treaty or convention; in the judgment of the Permanent Court in the *Mavrommatis Palestine Concessions (Jurisdiction)* case, Series A, No. 2, page 35, the Palestine Mandate was referred to as an 'international agreement'; and I have endeavoured to show that the agreement between the Mandatory and other Members of the League embodied in the Mandate is still 'in force'. The expression 'Member of the League of Nations' is descriptive in my opinion, not conditional, and does not mean 'so long as the League exists and they are Members of it'; their interest in the performance of the obligations of the Mandate did not accrue to them merely from the Membership of the League, as an examination of the content of the Mandate makes clear."

Court may call for commission of inquiry

Sir Arnold McNair continued:

"Moreover, the Statute of the International Court empowers it to call from the parties for 'any document' or 'any explanations' (Article 49) and to entrust any 'individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry . . .' (Article 50). Article 94 of the Charter empowers the Security Council of the United Nations to 'make recommendations or decide upon measures to be taken to give effect to the judgment' of the Court, in the event of a party to a case failing to carry out a judgment of the Court. In addition, the General Assembly or the Security Council of the United Nations may request the Court to give an advisory opinion on any legal question (Article 96 of the Charter)."

The conclusion may be drawn from the opinion of the Court on questions submitted to it that since the Court holds the United Nations to be the body which should exercise the functions of the League of Nations with respect to South West Africa, any dispute in terms of article 7 of the Mandate could be submitted by the United Nations itself to the International Court as one of the parties to the dispute. Alternatively, the General Assembly could recommend that all or some of the Member States of the United Nations who were members of the League of Nations at its dissolution should take the dispute regarding continuance of the Union's obligations with respect to South West Africa to the International Court for its adjudication under article 7 of the Mandate. The conclusion of a new instrument such as that suggested by South Africa would, however, preclude any recourse to the Court on the basis of the mandated status of South West Africa.

Since the substance of the matter was not brought before the General Assembly at its seventh session and further negotiations have come to no conclusion it would be possible for one or more former members of the League of Nations, such as the United Kingdom, the United States, France, India, Syria, Uruguay, Brazil, Norway, Thailand, etc., to take the case to the Court on their own initiative.

According to Article 53 of the Statute of the Court, if the Union of South Africa refuses to accept the jurisdiction of the Court on the ground that the Mandate has lapsed or declines to plead before it the Court can give an *ex parte* judgment after satisfying itself that it has jurisdiction in accordance with Articles 36 and 37 and that the claim is well founded in fact and law.

The United Nations Charter provides for the enforcement of a judgment of the Court in case of its non-compliance by a Member State in spite of its undertaking to do so under paragraph 1 of Article 94 of the Charter. Paragraph 2 of that Article authorizes recourse to the Security Council by the party affected and the Security Council "may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment".

Different opinions exist as to what action the Security Council can take to enforce a judgment of the International Court but if no action is taken by the Security Council, Articles 1, 2, 10 and 14 of the Charter leave the way open for action by the General Assembly on the question as a whole.

If South Africa should continue to refuse to carry out its legal obligations with respect to the Mandate of South West Africa, this could lead to its expulsion from the United Nations under Article 6 of the Charter. That might not be the end of the matter since under Article 2, paragraph 6, of the Charter the United Nations is required to ensure that the actions of States which are not Members of the United Nations conform to the principles of the Charter as far as is necessary for the maintenance of international peace and security.

There is danger, therefore, in the Union Government's position that, if this is persisted in, it may lead to the request by one or more States for an adjudication by the International Court. Defiance of the International Court by the Union of South Africa could in its turn set in motion a chain of action which could include a commission of inquiry into discriminatory conditions and legislation similar to the inquiry initiated by the Political Committee for the Union itself at the seventh session, but carrying with it the force of compulsory jurisdiction and following upon that further action by the General Assembly or the Security Council which could include the imposition of economic sanctions against South Africa, such as an embargo on its imports of oil and other commodities which could have serious political consequences for the Government in power.

The concept of protection of the rights of indigenous peoples and their tutelage goes back very much further than the Trusteeship System of the United Nations, and without it our civilization could hardly justify itself in Africa. It has been conceived and nurtured in the past century of colonial rule, and those who claim the moral leadership of the world at the present time cannot afford to connive at the breach of trust which South Africa's incorporation of South West Africa (or any of the Protectorates) into its tyrannical régime of racial discrimination would constitute. Britain herself is fast reaching a turning point in the history of her relations with Africa, and her initiative is required in an increasingly lawless world in consolidating what has been gained through generations of her rule in Africa. To Britain falls much of the responsibility now for keeping the confidence of Africans in the processes of internal and international law and order as well as in the principles of justice which underlie those processes.

It is therefore suggested that the compulsory jurisdiction of the Court should now be sought by former members of the League and a commission of inquiry appointed under Article 50 of the Statute of the Court.

Part II

RECORD OF HEREROS' APPEALS

It may be useful here to recapitulate some of the circumstances under which the writer came to represent the case of the Hereros in their enforced absence; for this purpose a letter to the Chairman of the Fourth Committee in Paris, dated 1 January 1952, may be quoted:

The Chairman,
Trusteeship Committee,
United Nations,
Palais de Chaillot,
Paris

South West Africa

Sir,

I enclose herewith a statement relating to the request that Chief Hosea Kutako and others of the Herero, Nama and Berg Damara tribes be permitted to appear before your Committee in accordance with its resolution A/C.4/L.136 of 15 November 1951.

The enclosed statement is drawn up in reply to a number of questions asked by distinguished delegates when I made an oral submission to your Committee on 8 December. It was then hoped that the chiefs concerned or their representatives would be granted travel facilities and I asked if replies to these questions could await their arrival.

Since they have not yet been granted these facilities and are therefore unable to appear and express themselves orally I have drawn up this statement which sets out in their proper order and context the relevant documents, including verbatim records of their own statements and petitions, which have been submitted by me on their behalf since 1946.

The serious implications of the South African Government's failure to comply with five successive resolutions of the General Assembly and with the advisory opinion of the International Court of Justice have been the subject of a number of petitions also from public bodies outside the Territory (A/1901/Add. 1-3.) In these it has been suggested that persistence in this course by the Union of South Africa would constitute a threat to peace and good order in Africa and that in that event recourse to the Security Council might have to be considered (See United Nations document A/1901/Add.3. Fellowship of Recon-ciliation, Canada).

I would convey through you, Sir, the deep anxiety of those Africans who have petitioned the United Nations from South West Africa, and at the same time their deep appreciation of the work of your Committee. In bearing the burden of critical decisions which will so profoundly affect Africa you are assured of the support and prayers of those Africans for whom the United Nations Organization is still inaccessible but is yet a firm ground of faith. And I trust your Committee's invitation to them to appear before it will remain open to them.

Under the circumstances at present prevailing in Southern Africa, where mounting suspicion and hostility need to be overcome by good faith and confidence, the attention of the United Nations ought also to be called to the threat which exists, not only to South West Africa, but to three other non-self-governing territories, namely, the British protectorates of Bechuanaland, Basutoland and Swaziland. On several occasions in recent months, the Prime Minister of South Africa has publicly declared his intention of making an issue at the next general election there of his demand for the incorporation of these three non-self-governing territories into the Union of South Africa.

I would like to conclude, Sir, with two Africans' statements. One is from an old Herero man who fought against the Germans in 1906:

"What we do not understand is that when two nations have been at war, such as Britain and Germany or Italy, and when one or another of these nations is defeated, the lands belonging to that other nation are not taken away from them. That nation remains a nation and their lands belong to them. The African people, although they have always been on the side of the British people and their Allies, yet have their lands taken away from them and are still treated as though they had been conquered by them" (Summary Record, Fourth Committee, 1949, page 261, paragraph 31).

And from David Witbooi, an aged Nama chief mentioned in your resolution:

"If we have to put down in writing the conditions of our life, then, we do not know where to begin and where to end. Should we be born and live and close our eyes under this unending imprisonment? Are we a cursed generation because our chiefs fought for the freedom of their people, their nation and their land?" *Ibid.*, page 264, paragraphs 71 and 72.

Yours faithfully,
(Signed) Michael Scott

It has not yet been possible for the South West African chiefs or their designated representatives to obtain the necessary travel facilities to enable them to appear before the Trusteeship Committee as invited. I have received a further cable from Chief Hosea Kutako stating that they have not yet been able to obtain passports from the South African Government, that they approached the Native Commissioner on 18 December 1951 and again on 27 December 1951 and were told to await the Government's decision.

Under the circumstances, and in view of a number of questions which have been asked of me by a number of delegations, I should like as briefly as possible to recapitulate the circumstances in which the Herero people and others came to make their appeal to the United Nations, and I should like to refer to the facts about my own association with them since these were the subject of a question by the distinguished delegate of Sweden and others, and also to summarize the opinions and information submitted by me on their behalf.

In the first place, it is a matter on record in the United Nations archives that the Herero people first made representation to the United Nations in 1946 before I had been to South West Africa or had met any of their leaders there or in Bechuanaland. This cable from Hosea Kutako was listed by the Secretariat at the time of its first debate on the question of South West Africa in 1946. My work since 1943 when I returned to South Africa had been at the St. Alban's Mission, in the slum districts of Johannesburg and I had never previously been in the territory of South West Africa. In November of that year, I was staying in Bechuanaland with Tshekedi Khama and was informed that Frederick Mahareru, the traditional Paramount Chief of the Hereros would like an interview with me. In the course of this interview he explained that great anxiety was being felt by his people and by their leaders in South West Africa as they were being asked their opinions regarding the future of their country and he was receiving letters asking him to go there and help them. "The heritage of your fathers' orphans is about to be taken from them", said one of the letters.

"Some of us have been to Windhoek to attend a meeting to discuss the country. The white people there say that the country must be joined to the Union, but we said that it could not be joined to the Union but should be given to us as it is ours. All efforts are being made to prevail on us so that it may be joined to the Union.

"Chief Frederick, the heritage of your father's orphans is about to be taken from them and because we cannot speak with one voice as we are scattered all over their country our heritage may therefore fall to that side for which we have no liking."

said other letters.

It was explained to me that there were difficulties about the free movement of their people inside the territory and between Bechuanaland and South West Africa. He hoped it would be possible for me to visit them and also that their fears and views could be made known.

At the same time, I was shown the correspondence and record of interviews which had passed between Chief Frederick Mahareru, the High Commissioner for the United Kingdom, Tshekedi Khama and others in Bechuanaland regarding their views on the question of the incorporation of South West Africa into the Union. In an interview with the High Com-

missioner on 20 September 1946, at Mafeking, Chief Frederick Mahareru said

"I have heard with alarm that my country will be incorporated into the Union, and so I desired to meet your Excellency and ascertain whether it is true that my country is going to be made part of the Union."

The views of the five senior chiefs of Bechuanaland were set out also in a memorandum entitled "The Case for Bechuanaland" which was given to me at the same time.

After hearing these opinions I communicated by cable with the United Nations Secretary-General on 12 November 1946 asking whether the opinions of the Herero, Nama and Berg Damara tribes had been made known to the United Nations.

Early in 1947, I visited South West Africa and after obtaining an official written permission from the Government visited Chief Hosea Kutako in his reserve at Amemus. I made a written record of this and subsequent interviews at Gobabis and Windhoek with Chief Hosea Kutako and other elders and people of the Herero, Nama and Berg Damara tribes with the dates on which they occurred, the names of interpreters and others present and conveyed these to Chief Frederick in Bechuanaland. It was on the basis of these views and wishes expressed in these interviews that the petition addressed to the United Nations in 1947 was made. On my return to South West Africa, this petition was signed at gatherings of chiefs and elders at Windhoek, Gobabis and Okahandja. This petition and an explanatory memorandum containing a record of the original interviews with Chief Frederick and the correspondence with the United Kingdom High Commissioner for Bechuanaland were conveyed to the United Nations in New York in 1947, and were published as United Nations documents A/C.4/94, 95, 96 and 97. Objections to this petition were made by the South African Government and recorded in document A/C.4/118.

I returned to South West Africa in February 1948 to report on the question as it then stood and on the debate that had taken place in the Trusteeship Committee and the plenary session and also on the Trusteeship Council's examination of the report submitted on the Administration of South West Africa for 1946 by the Union Government, and the fifty questions which had been submitted to the Government of South Africa on their report. (See United Nations document T/175). I was not allowed permits to visit the Reserve where the petitioners lived and was granted only one permit to visit one location by the Magistrate at Gobabis for a period of four hours, and on condition that I promised not to hold a public meeting.

I camped outside the Windhoek location for several weeks and recorded interviews with the Chiefs Hosea Kutako, Nicamor Hoveka, Festus Kandjo and a number of other leaders during that time.

After recording these statements in English they were read back by the interpreters to those who had made them (in their own language) and were then signed and witnessed by the interpreters and others present.

These statements I also conveyed to the United Nations in 1949. Having failed to reach Paris in November 1948 in time for the debate on account of passport and travel difficulties, I went to New York and, in 1949, was granted permission to address the Trusteeship Committee, after numerous letters and documents constituting my credentials had been examined by a special committee appointed by the Trusteeship Committee, and were found to be worthy of "full faith and credit". (See United Nations documents A/C.4/L.60, 62, 57.)

In the course of my submission in 1949, I described the conditions in the territory as they had been described to me by these Africans and the hopes and fears which they had expressed to me and which they had hoped they would be allowed to convey to the United Nations themselves. I reiterated their request to be allowed to be present when the question of the future of their country was being discussed by the Fourth Committee and submitted a number of written statements and an extract from the South West Africa Commission on Native Labour which had been published and these were printed in the annexure to the proceedings of the

Trusteeship Committee in 1949 (Summary Record, Fourth Committee, 1949, and Annexure, pages 13-36).

While in Paris at this session of the United Nations the writer received a notification from the Ministry of the Interior that I had been declared "a prohibited inhabitant of or visitor to the Union". And it has not yet been possible to get this order rescinded. In the absence of the Chiefs, the Fourth Committee heard further oral submissions from the writer and a resolution was passed authorizing the *Ad Hoc* Committee to continue its negotiations. This resolution was repeated again in 1952.

Part III

A BRIEF HISTORY OF THE MATTER

The importance which was attributed in the past by the League of Nations and at present by the United Nations to the question of South West Africa derives from the fact that the history of this territory was one of the primary reasons for bringing into being the system of international accountability for colonial territories. It had been in South West Africa that one of the darkest chapters of the white man's dealings with Africa had been enacted by Germany.

Three of the principal tribes there had been converted to the Christian faith by the early German missionaries of the Lutheran church. They were the Hereros, the Namas or "Hottentots", and the Berg Damaras. After their conversion to the Christian gospel and acceptance of Christ as the Saviour they found themselves being remorselessly deceived and dispossessed of their lands and rights through bogus treaties and "gentlemen's agreements". The doctrine of the "*herrenvolk*" was first applied as a principle of colonial policy in Africa by Paul Rohrbach of the German Colonial Office. One of the principal executives of this policy was none other than the father of Herman Goering. When the Africans awoke to the full significance of this doctrine and its implications they rose in abortive revolt to find that they had been surrounded by the German army. After their defeat they were massacred. The Hereros were reduced from 80,000 to 15,000 men, women and children, and the Nama people were halved, according to the British Government's Blue Book C.D. 9146.

The horrors of that massacre in the desert under the orders of the German General von Trotha, are remembered in South West Africa to this day by their Chief, Hosea Kutako, and others who have miraculously kept their faith in spite of all that has happened to them. Europe has since been twice devastated by a Germany inebriated with this doctrine of racial supremacy.

During the First World War some of the Herero chiefs who had sought refuge in the neighbouring British Protectorate of Bechuanaland were persuaded by the British authorities to go back into South West Africa and to persuade their people to support the Allied armies. In return for this, they were given to understand that their traditional lands would be returned to them. When they asked that this should be put in writing they were told that the treaty would be drawn up after the war and after the defeat of Germany but could not be done before. For their support to the Allied armies many Hereros were shot and were hanged from the trees by wire ropes and were buried up to their necks in the sand.

After the war, the Treaty of Versailles was signed between the Allies and Germany. The United States of America was not a signatory to the Versailles Treaty but signed her own treaty with Germany. Under these treaties, Germany's colonial possessions were not to be transferred to the ownership of the Allies, but the principle of international accountability was to be established through the Permanent Mandates Commission of the League of Nations. This body was entrusted by the principal Allied and Associated Powers (which included the United States) with the task of examining annual reports by the administering Powers and it was also given the responsibility of examining petitions from the inhabitants. Thus the inhabitants of South West Africa were among the first

to receive a formal right of petition to an international tribunal.

South Africa was entrusted with the task of administering South West Africa by the Principal Allied and Associated Powers (not by the League of Nations). It was to be regarded as a "sacred trust of civilization". Its primary purpose was to be the economic and social well-being of the inhabitants.

When at the end of the Second World War South Africa claimed the right to incorporate South West Africa into the Union, this claim was rejected by the United Nations General Assembly at London and at San Francisco, and every year subsequently the United Nations has passed resolutions calling upon South Africa to bring the territory under the Trusteeship System or to continue administering it as a Mandate. South Africa has pursued its own course and has in effect incorporated it into the Union by giving South West Africa six seats in the Union's House of Assembly. Only the white one-tenth of the population has the right of election, however. The "non-European" nine-tenths of the population is represented by one senator in the Upper House who is nominated by the Government and who must be white.

It was because of this and because of the extent to which racial discrimination has been applied in this so-called "sacred trust of civilization" that the United Nations showed a patience and a readiness to grant a hearing to the Africans from that territory when they appealed to the United Nations. Dr. Malan is exasperated by the persistence of the United Nations and their refusal to recognize his *fait accompli*.

In 1949, and again in 1951, the writer was given permission to make an oral statement before the Fourth Committee on behalf of the petitioners. In 1951, the South African Government had refused to allow Chief Hosea Kutako and others to come, after they had received a cable from Dr. Ralph Bunche conveying the readiness of the Fourth Committee to hear them. The South African representative walked out of the Fourth Committee in protest at the action which he considered unconstitutional and an interference in the domestic affairs of South Africa.

The procedural question involved here, however, was not the right of petition of the inhabitants of South West Africa or whether this should be an oral or written petition, as it had been under the League, but rather the right of a committee of the United Nations to hear first-hand evidence on a matter of which it had been legitimately seized by the General Assembly. The subject of South West Africa had been entrusted to the Fourth Committee to deal with by the General Assembly. For five years they have been inviting South Africa to come to some agreement which would continue the essential features of the Trust. If, as South Africa contends, the League of Nations is dead, that does not mean, as the International Court of Justice pointed out in its advisory opinion on the matter, that the obligations are dead. These continue, and if South Africa does not wish to recognize the Trusteeship System then there was the *Ad Hoc* Committee especially set up by the Fourth Committee to negotiate an agreement as nearly as possible in accordance with the terms of the Mandates System.

(The Hereros' petition did not establish the right of any individual or group to be granted a hearing but rather the right of the Committee itself to hear evidence, if necessary in face of the opposition of a Member State, where it considered the subject itself of sufficient importance to warrant this. The discretion of course remains with the Fourth Committee, and groups in colonial territories ought not to assume that they have an established right to a hearing by the Fourth Committee. The inhabitants of the Trust Territories are the only people who can yet be said to have the right of petition with a procedure established for the hearing of oral petitions.)

South Africa continues to refuse to negotiate any agreement with any organ of the United Nations, or to recognize its

jurisdiction in South West Africa. The United Nations, however, maintains that it has an obligation towards the inhabitants of that territory, and that South Africa has obligations towards them and towards the United Nations. The question remains—how will this tribunal of the world, which for all its shortcomings remains the only tribunal for the continuance of this sacred trust of civilization, be able to make effective the rule of international law in this African base. It is a very significant case at the present time and one which is being watched by all Africa in face of the threat of increasing lawlessness and racial discrimination by the present Government against the African and other "non-European" peoples of the territories under its otherwise undisputed sway.

The determination which the United Nations has shown in this matter may not be of the same order as that shown in resistance to aggression elsewhere. But it is significant in the whole world context at the present time. The West cannot afford another *débâcle* in Africa such as it has suffered in Asia. There must not be another Malaya in Africa. The West must somehow bring home to the South African Government the irresponsibility of its policies in Africa and their increasingly dangerous consequences, before it is too late.

This may explain the persistence of the United Nations in seeking to grant a hearing to these African chiefs. They were refused permission to attend the United Nations and the writer has been declared a "prohibited inhabitant of or visitor to the Union". But the attempt to secure a hearing for Chief Hosea Kutako will go on because it is of importance to the African

people that his story should go on record and should be heard, for it is the story of his people, from his childhood till today. It is the history of the impact of our civilization on that part of Africa, and of all that now has to be rectified with all the technical resources that our civilization has through the United Nations and its specialized agencies.

The question of a hearing (while it has not established a precedent or procedure yet whereby all colonial peoples can appeal to the United Nations or the Fourth Committee) has, despite South Africa's defiance, strengthened the conception of international accountability for colonial territories and respect for the rights of indigenous peoples. It has also increased the importance of the part which the non-governmental organizations can play in representing the interests of those who, for political reasons, may not themselves have access to the United Nations and who, without some unofficial channel of communication, would remain inarticulate.

Nevertheless, in the particular case of South West Africa it was the importance of the subject in the general history of colonial rule and the present development of trusteeship, and the recognition of this by the Fourth Committee, that led to the grant of a hearing to the writer in the absence of the Herero Chief.

Under the circumstances related above it is urgently necessary to appeal to those who were formerly Members of the League of Nations to initiate proceedings at the International Court of Justice to secure its compulsory jurisdiction in the matter of South West Africa and to call for a commission of inquiry in accordance with Article 50 of the Statute of the Court.

Appendix VIII

Chief Hosea Kutako,
P. O. Box 1034,
Windhoek,
South West Africa,
8 December 1952

The Secretary-General,
United Nations,
New York

Sir,

I hereby wish to inform you that our wish is to put South West Africa under the direct supervision of the United Nations but not under any other independent instrument.

We strongly object to the proposal made by the Union Government to appoint Britain, France and the United States to be the new instrument to whom the reports on the administration of South West Africa should be sent.

It is our wish that the reports on the administration of South West Africa be examined by the United Nations, or an instrument appointed by and responsible to the United Nations.

As we have been refused to send our own delegation to the United Nations to present, we again ask the United Nations to send an impartial commission to South West Africa, to see the conditions under which we are forced to live as well as to obtain information in regard to our desires.

Hoping that the United Nations will consider sending the long desired impartial commission,

I am,
Yours faithfully,
(Signed) HOSEA KUTAKO

Appendix IX

Chief David Witbooi,
c/o P. O. Box 17,
Gibeon, South West Africa,
1 June 1953

The Chairman,
Ad Hoc Committee on South West Africa,
United Nations,
New York

Dear Sir,

I, the undersigned Chief of the whole Nama tribe in South West Africa humbly beg to state my opinion as follows:

During the last years until now the question of the future of South West Africa has been debated seriously. It has come so far that the opinion of the International Court of Justice has been asked, and other different opinions and suggestions have been made from all sides although they have reached no definite agreement. In spite of the fact that no opinion has been asked to us as a population, which is most vexed by this question we are very worried with the future of this country of ours.

On behalf of my people I wish to call upon the United Nations to resolve no agreement whatsoever in connexion herewith until the United Nations has forwarded an impartial commission to us or until our own people represent us on the United Nations. Among all those motions which have been made in that matter the suggestion given by the American student namely Herbert F. Krensky is considered as an effective one.

This suggestion which contains the whole Southern Africa calls the "Confederation as a possible solution for the Race Question in the Union" and is written in the Afrikaans News Paper the "Huisgenoot" of the 19 September 1952. In this suggestion the Southern Africa is divided into twenty-four federation States, twelve of whom are the Sovereign European States, and the other twelve are the non-European States ruled by themselves.

If this idea is accepted it means, that the Nama tribes should have no occupation at all, because the proposer has made no provision for this big nation in his opinion and has left it out consciously. The parts whereon the Nama tribes should claim begin from north to south from the southern point of the Reaboth Republic up to the Southern point of the Bondeis Reserve and, from West to East, from the Namib country up to the Kalahari.

If this idea is accepted, once more I wish to call upon the United Nations to declare these parts as the "Namaland Republic" as it has been done with the other nations, otherwise we do not receive it peacefully and with congratulation.

The suggested plan is enclosed for your information.⁹

I remain, yours in expectation,

(Signed) Chief David WITBOOI

⁹ Note by the Secretariat: The suggested plan is in the files of the Secretariat and may be examined upon request.