

Eighth session
Agenda item 36

QUESTION OF SOUTH WEST AFRICA

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Report of the Fourth CommitteeRapporteur: Mr. N. RIFAI (Syria)

1. In accordance with General Assembly resolution 651 (VII) of 20 December 1952, the Assembly decided, at its 435th plenary meeting on 17 September 1953, to include the question of South West Africa in the agenda of its eighth session. At the same meeting, the General Assembly referred the question to the Fourth Committee.
2. During its 357th through its 364th meetings, on 6, 9, 10, 11 and 12 November 1953, the Committee considered the report of the Ad Hoc Committee on South West Africa (A/2475 and Add.1 and 2).
3. At the 357th meeting on 6 November 1953, Burma and India submitted a joint draft resolution (A/C.4/L.304).
4. At the 360th meeting, on 10 November 1953, Afghanistan, Brazil, Burma, Denmark, Egypt, India, Indonesia, Pakistan, the Philippines, Saudi Arabia, Syria, Thailand and Uruguay, who were joined by Iraq and Liberia at the 362nd meeting, submitted a draft resolution (A/C.4/L.305/Rev.1 and Add.1) whereby the General Assembly would, inter alia, (1) establish, until such time as an agreement was reached between the United Nations and the Union of South Africa, a Committee on South West Africa consisting of nine members and request this Committee to (a) examine, within the scope of the Questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926, such information and documentation as might be

available in respect of the Territory of South West Africa; (b) examine, as far as possible, in accordance with the procedure of the former Mandates System, reports and petitions which might be submitted to the Committee or to the Secretary-General; (c) transmit to the General Assembly a report concerning conditions in the Territory taking into account, as far as possible, the scope of the reports of the Permanent Mandates Commission of the League of Nations; (d) prepare for the examination of the General Assembly a procedure for the examination of such reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations; (2) authorize the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa; and (3) request the Committee to submit reports on its activities to the General Assembly at its regular sessions.

5. At the 360th meeting, Burma and India, having become co-sponsors of the above joint draft resolution and of a further joint draft resolution (A/C.4/L.306 and Add.1) withdrew the joint draft resolution which they had submitted at the 357th meeting (A/C.4/L.304).

6. At its 364th meeting on 12 November 1953, the Committee voted on the joint draft resolution (A/C.4/L.305/Rev.1 and Add.1) as follows:

7. The first paragraph of the preamble was adopted by 43 votes to 6.

8. The second paragraph of the preamble was voted upon in three parts.

Sub-paragraph (a) was adopted by 48 votes to one, with one abstention.

Sub-paragraph (b) was adopted by 42 votes to one, with 7 abstentions. Sub-paragraph (c) was adopted by 47 votes to one, with 2 abstentions. The paragraph as a whole was then adopted by 45 votes to one, with 4 abstentions.

9. The third, fourth and fifth paragraphs of the preamble were each adopted by 44 votes to one, with 5 abstentions.

10. Paragraph 1 of the operative part of the resolution was adopted by 45 votes to one, with 5 abstentions.

11. Paragraph 2 was adopted by 44 votes to 5, with 3 abstentions.
12. Paragraph 3 was adopted by 46 votes to one, with 4 abstentions.
13. Paragraph 4 was adopted by 45 votes to 4, with 2 abstentions.
14. Paragraph 5 was adopted by 45 votes to 3, with 3 abstentions.
15. As regards paragraph 6, the Committee voted first on that part of sub-paragraph (a) reading "though it should not exceed that which applied under the Mandates System", which was adopted by 35 votes to 5, with 11 abstentions. The Committee next voted on sub-paragraph (a) as a whole, which was adopted by 40 votes to one, with 10 abstentions. It then voted on sub-paragraph (b), adopted by 46 votes to one, with 4 abstentions and, finally, on paragraph 6 as a whole which was adopted by 41 votes to one, with 9 abstentions.
16. Paragraph 7 was voted on in parts. The first part, up to and including the words "International Court of Justice" was adopted by 43 votes to 2, with 7 abstentions. The remainder of the paragraph was adopted by 48 votes to one, with 2 abstentions; the paragraph as a whole was adopted by 43 votes to 2, with 7 abstentions.
17. Paragraph 8 was adopted by 50 votes to one, and paragraph 9 by 49 votes to one.
18. Paragraphs 10 and 11 were each adopted by 47 votes to one, with 3 abstentions.
19. Paragraph 12 was voted on in parts. Sub-paragraph (a) was adopted by 39 votes to 12, with one abstention. Sub-paragraph (b) was adopted by 39 votes to 8, with 6 abstentions. Sub-paragraph (c) was adopted by 39 votes to 8, with 4 abstentions, and sub-paragraph (d) by 45 votes to 6, with 1 abstention. The paragraph as a whole was then adopted by a roll-call vote of 39 to 8, with 6 abstentions. The voting was as follows:

<u>In favour:</u>	Afghanistan, Argentina, Bolivia, Brazil, Burma, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Saudi Arabia, Sweden, Syria, Thailand, United States of America, Uruguay, Venezuela, Yugoslavia.
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Against: Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, France, Poland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics.

Abstaining: Australia, Canada, Israel, Netherlands, New Zealand, United Kingdom of Great Britain and Northern Ireland.

20. Paragraph 13 was adopted by 44 votes to 6, with 2 abstentions.

21. Paragraph 14 was adopted by 43 votes to 6, with 3 abstentions.

22. The joint draft resolution as a whole (A/C.4/L.305/Rev.1 and Add.1) was then adopted by a roll-call vote of 41 to one, with 11 abstentions. The voting was as follows:

In favour: Afghanistan, Argentina, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Saudi Arabia, Sweden, Syria, Thailand, United States of America, Uruguay, Venezuela, Yugoslavia.

Against: Union of South Africa.

Abstaining: Australia, Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, France, Netherlands, New Zealand, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland.

23. Concurrently with the above joint draft resolution (A/C.4/L.305/Rev.1 and Add.1), the Committee considered a joint draft resolution (A/C.4/L.306 and Add.1) submitted at the 360th meeting on 10 November 1953 by Afghanistan, Burma, Egypt, India, Indonesia, Iraq, Pakistan, the Philippines, Saudi Arabia, Syria and Uruguay, whereby the General Assembly would (1) reiterate its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950 and 570 B (VI) of 19 January 1952, to the effect that the Territory of South West Africa should be

placed under the International Trusteeship System; and (2) reassert that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter.

24. At its 364th meeting on 12 November 1953, the Committee voted on the joint draft resolution (A/C.4/L.306 and Add.1).

25. The first paragraph of the preamble was adopted by 44 votes to one, with 7 abstentions.

26. The second paragraph of the preamble was voted on in parts. Sub-paragraph (a) was adopted by 39 votes to 6, with 6 abstentions. Sub-paragraph (b) was adopted by 39 votes to one, with 12 abstentions. The second paragraph of the preamble, as a whole, was then adopted by 39 votes to one, with 12 abstentions.

27. The third paragraph of the preamble was adopted by 44 votes to one, with 6 abstentions.

28. Paragraph 1 of the operative part of the resolution was adopted by 42 votes to one, with 8 abstentions.

29. Paragraph 2 was adopted by 43 votes to one, with 7 abstentions.

30. The joint draft resolution as a whole was then adopted by a roll-call vote of 42 to one, with 10 abstentions. The voting was as follows:

In favour:

Afghanistan, Argentina, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Saudi Arabia, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Venezuela, Yugoslavia.

Against:

Union of South Africa.

Abstaining:

Australia, Belgium, Canada, Denmark, France, Greece, Netherlands, New Zealand, Sweden, United Kingdom of Great Britain and Northern Ireland.

31. The Fourth Committee therefore recommends to the General Assembly the adoption of the following resolutions.

QUESTION OF SOUTH WEST AFRICA

Resolution A

The General Assembly,

Having accepted, by resolution 449 A (V) of 13 December 1950 and by resolution 570 (VI) of 19 January 1952, the advisory opinion of the International Court of Justice with respect to South West Africa,

Recalling that the advisory opinion of the International Court of Justice with respect to the Territory of South West Africa sets forth, inter alia, that:

(a) The Territory of South West Africa is a Territory under the International Mandate assumed by the Union of South Africa on 17 December 1920,

(b) The Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations,

(c) The Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted,

Considering that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations and by article 7 of the Mandate for South West Africa,

Having reconstituted the Ad Hoc Committee on South West Africa, consisting of the representatives of Norway, Syria, Thailand, the United States of America and Uruguay, by General Assembly resolution 570 A (VI) of 19 January 1952 and, by General Assembly resolution 651 (VII) of 20 December 1952, having continued it on the same basis as before,

Having considered the reports of the aforesaid Ad Hoc Committee, i.e. document A/2261 submitted on 21 November 1952 and documents A/2475 and Adds.1 and 2 submitted on 16 September, 8 October and 9 November 1953,

1. Commends the Ad Hoc Committee on South West Africa for its earnest and constructive efforts to find a mutually satisfactory basis of agreement;

2. Records with deep regret that the Government of the Union of South Africa continues in its refusal to assist in the implementation of the advisory opinion of the International Court of Justice concerning South West Africa, and continues to maintain that the Union of South Africa has no international commitments as the result of the demise of the League of Nations, and that the Government of the Union of South Africa is prepared only to enter into new arrangements for the Territory of South West Africa with the Principal Allied and Associated Powers of the First World War (France, the United Kingdom and the United States of America), and not with the United Nations;

3. Notes with concern that as required by paragraph 6 of General Assembly resolution 570 A (VI), the Ad Hoc Committee was unable to examine reports on the administration of the Territory of South West Africa because again no such reports were submitted by the Government of the Union of South Africa;

4. Notes with further regret that the Union of South Africa has refused to co-operate with the United Nations concerning the submission of petitions in accordance with the procedures of the Mandates System;

5. Notes the contents of the communications relating to South West Africa received by the Ad Hoc Committee in 1951, 1952 and 1953 from sources within and outside the Territory of South West Africa and contained in the aforesaid reports of the Ad Hoc Committee;

6. Affirms that, in order to implement the advisory opinion of the International Court of Justice with regard to South West Africa,

(a) The supervision of the administration of South West Africa, though it should not exceed that which applied under the Mandates System, should be exercised by the United Nations; judicial supervision by the International Court of Justice, which the Union Government is prepared to accept, is not in accordance with the advisory opinion expressed by that Court and accepted by the General Assembly;

(b) The Union Government should assume its obligations to the United Nations and not, as proposed by the Union Government, to the three Powers (France, the United Kingdom and the United States of America) as principals;

7. Appeals solemnly to the Government of the Union of South Africa to reconsider its position, and urges it to continue negotiations with the Committee on South West Africa in accordance with the aforesaid principles for the purpose of concluding an agreement providing for the full implementation of the advisory opinion of the International Court of Justice; and urges it further to resume submission of reports on the administration of the Territory of South West Africa and to transmit to the United Nations petitions from individuals or groups of the population of the Territory;

8. Recalls and reaffirms that the Territory of South West Africa is a Territory under the International Mandate assumed by the Union of South Africa on 17 December 1920;

9. Reaffirms further that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted;

10. Considers that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations;

11. Believes that it would not fulfil its obligations towards the inhabitants of South West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South West Africa which were formerly exercised by the League of Nations;

12. Establishes, until such time as an agreement is reached between the United Nations and the Union of South Africa, a Committee on South West Africa consisting of nine members and requests this Committee to:

(a) Examine, within the scope of the Questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926, such information and documentation as may be available in respect of the Territory of South West Africa;

(b) Examine, as far as possible, in accordance with the procedure of the former Mandates System, reports and petitions which may be submitted to the Committee or to the Secretary-General;

(c) Transmit to the General Assembly a report concerning conditions in the Territory taking into account, as far as possible, the scope of the reports of the Permanent Mandates Commission of the League of Nations;

(d) Prepare, for the consideration of the General Assembly, a procedure for the examination of reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations;

13. Authorizes the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa;

14. Requests the Committee to submit reports on its activities to the General Assembly at its regular sessions.

Resolution B

The General Assembly,

Having recommended, by its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950 and 570 B (VI) of 19 January 1952, that the Mandated Territory of South West Africa be placed under the International Trusteeship System, and having repeatedly invited the Government of the Union of South Africa to propose, for the consideration of the General Assembly, a Trusteeship Agreement for South West Africa,

Having accepted, by resolution 449 A (V) of 13 December 1950, the advisory opinion of 11 July 1950 of the International Court of Justice concerning South West Africa, inter alia, to the effect that:

(a) While "the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the Territory under the Trusteeship System", they are applicable "to the Territory of South West Africa in the sense that they provide a means by which the Territory may be brought under the Trusteeship System",

(b) "The Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations",

Considering that, in accordance with Chapter XII of the Charter, all mandated territories which have not achieved independence have been brought under the Trusteeship System with the sole exception of the Territory of South West Africa,

1. Reiterates its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950 and 570 B (VI) of 19 January 1952, to the effect that the Territory of South West Africa be placed under the International Trusteeship System;

2. Reasserts that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter.
