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Tenth session
Agenda item 30

QUESTION OF SOUTH WEST AFRICA

Report of the Fourth Committee

Rapporteur: Mr. Daniel MASSONET (Belgium)

1. At its 530th meeting on 30 September 1955, the General Assembly allocated to the Fourth Committee the following item on its agenda:

"30. Question of South West Africa:

"(a) Voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa: advisory opinion of the International Court of Justice^{1/};

(b) Report of the Committee on South West Africa.^{2/}"

2. The Committee considered the item from its 491st to 508th meetings between 31 October and 14 November and from its 510th to 512th meetings on 15 and 17 November.

3. At its 491st meeting on 31 October, the Committee decided that the question of South West Africa should be discussed in three separate stages, namely: (a) the advisory opinion of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa; (b) the substantive aspects of the report of the Committee on South West Africa; and (c) the question of the admissibility of oral hearings by the Committee on South West Africa. During the discussion of the last stage of the item, the Committee received a request^{3/} for a hearing from the Reverend Michael Scott.

^{1/} I.C.J. Reports 1955, p. 67, circulated under cover of document A/2918.

^{2/} See Official Records of the General Assembly, Tenth Session, Supplement No. 12, document A/2913, and documents A/2913/Add.1 and 2.

^{3/} A/C.4/313 and Add.1.

4. A detailed account of the Committee's consideration of the item and of the request for a hearing, is given in sections A to D below.

A. Advisory opinion of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa (A/2918)

5. At the 491st meeting, Mexico, Pakistan, Saudi Arabia, Syria, Thailand, and the United States of America submitted a draft resolution (A/C.4/L.405) whereby the General Assembly would accept and endorse the advisory opinion of 7 June 1955 of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa. The draft resolution was adopted by 44 votes to one, with 4 abstentions, and is annexed to the present report as draft resolution I.

B. Report of the Committee on South West Africa (A/2913 and Add.1 and 2)

6. From its 491st to 500th meetings and at its 510th and 512th meetings, the Fourth Committee considered the report of the Committee on South West Africa; a general debate on conditions in the Territory was held from the 491st to 497th meetings.

7. At its 497th meeting on 4 November 1955, the Committee adopted the draft resolution (A/2913, annex VI) proposed by the Committee on South West Africa on the petition and communications relating to the Rehoboth Community. The draft resolution was adopted by 32 votes to 3, with 9 abstentions, and is annexed to the present report as draft resolution II.

8. At the same meeting, the Committee adopted the draft resolution (A/2913, annex VII) proposed by the Committee on South West Africa on the petition and communications from Hosea Kutako, David Roos and Erastus Amgabeb. The draft resolution was adopted by 38 votes to one, with 7 abstentions, and is annexed to the present report as draft resolution III.

9. Also at the same meeting, the Committee adopted the draft resolution (A/2913, annex VIII) proposed by the Committee on South West Africa on the petition and communication from the Reverent T.H. Hamtumbangela. The draft resolution was adopted by 39 votes to one, with 7 abstentions, and is annexed to the present report as draft resolution IV.

10. At the 501st plenary meeting of its ninth session, on 23 November 1954, the General Assembly had decided not to put to the vote two draft resolutions on petitions concerning South West Africa contained in the report of the Fourth Committee (part II)^{4/} before it was seized of the advisory opinion of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa, which the Assembly had requested at the same meeting.^{5/}

11. As stated in paragraph 5 above, the Fourth Committee adopted a draft resolution whereby the General Assembly would accept and endorse the advisory opinion given by the Court on 7 June 1955.^{6/} The Committee, having voted, at the ninth session of the General Assembly, on the two draft resolutions mentioned in paragraph 10, decided, without objection, at its 497th meeting on 4 November 1955, to include the two resolutions in the present report (see draft resolutions V and VI).

12. The Committee had before it, and considered concurrently, two draft resolutions concerning the status of the Territory of South West Africa. By the first of these (A/C.4/L.409), sponsored by Burma, Colombia, Costa Rica, El Salvador, India, Syria, Thailand and Yugoslavia, the General Assembly would: (1) reiterate its previous resolutions, to the effect that the Territory be placed under the International Trusteeship System; and (2) reassert that the normal way of modifying the present 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. By the second draft resolution (A/C.4/L.410), sponsored by Haiti, Lebanon, Liberia, Pakistan and Saudi Arabia, the General Assembly would: (1) call upon the Government of the Union of South Africa not to take any action tending to modify the status of South West Africa without prior consultation and consent of the United Nations;

4/ See Official Records of the General Assembly, Ninth Session, Annexes, agenda item 34, document A/2747/Add.1.

5/ Resolution 904 (IX).

6/ A/2918.

(2) consider further that the proper discharge of the sacred trust of civilization for the well-being and development of the peoples of the Territory required that they be fully and freely consulted on any proposal for a modification of the status of the Territory; and (3) request the Secretary-General to approach the Government of the Union to find out whether it had any such proposal and to consider its suggestions as to the manner in which the peoples concerned might be consulted, and to report to the Assembly on the results of his talks with the Government of the Union.

13. The Committee, at its 498th meeting on 7 November, adopted the first draft resolution (A/C.4/L.409) by 40 votes to 2, with 10 abstentions. The draft resolution is annexed to the present report as draft resolution VII.

14. At the same meeting, the second draft resolution (A/C.4/L.410) was withdrawn by the sponsors.

15. The Committee had also before it a draft resolution (A/C.4/L.408), introduced by Denmark, Egypt, Guatemala and India concerning the report of the Committee on South West Africa. According to this draft resolution, the General Assembly would (1) express its appreciation of the work of the Committee; (2) take note of the observations of the Committee concerning conditions in the Territory; (3) draw to the attention of the Government of the Union of South Africa the Committee's report and observations; (4) urge the Government of the Union to give serious consideration to the observations and recommendations of the Committee; (5) invite the Government of the Union to co-operate with the Committee on South West Africa and, in particular, to submit to the Committee reports on its administration of the Territory of South West Africa, and to assist the Committee in the examination of such reports, or such information and documentation as might be available to that Committee; and (b) request the Committee on South West Africa in the preparation of its next report to take into account the discussions in the Fourth Committee.

16. The following amendments to the draft resolution were introduced:

(a) An amendment (A/C.4/L.412) proposed at the 498th meeting by Liberia, according to which an additional operative paragraph would be inserted as paragraph 3 reading as follows: "Approves the report of the Committee on South West Africa".

(b) An amendment (A/C.4/L.411) proposed at the 499th meeting by Indonesia, Iraq, Liberia, Saudi Arabia and Yugoslavia, according to which the following words would be added at the end of the operative paragraph 4: "and adopt measures to implement them in order to ensure the fulfilment of its obligations and responsibilities under the Mandate".

(c) An amendment (A/C.4/L.411) proposed at the 499th meeting by Indonesia, Iraq, Liberia, Saudi Arabia and Yugoslavia, according to which an additional operative paragraph would be added at the end of the draft resolution, reading as follows: "7. Requests the Committee on South West Africa further, in the preparation of its next and future reports, to include its recommendations on each aspect of conditions in the Territory for such particular action as it considers the Government of the Union of South Africa should take to ensure the fulfilment of its obligations and responsibilities under the Mandate".

(d) An oral amendment, proposed at the 499th meeting by the representative of Argentina to the amendment under (b) above, whereby the words "and adopt measures" would be replaced by the words "and study the possibility of adopting measures...". This oral amendment was accepted by the sponsors.

(e) Two oral amendments, proposed at the 499th meeting by the representative of the Philippines, whereby the words "and such petitions as may be received" would be inserted after the words "submit to the Committee reports" in operative paragraph 5 of the draft resolution, and the words "and petitions" would be added after the words "examination of such reports".

17. At its 499th meeting on 7 November 1955, the Committee voted upon the draft resolution and the amendments thereto as follows:

The first two paragraphs of the preamble were adopted by 47 votes to one, with 5 abstentions.

The third paragraph of the preamble was adopted by 46 votes to 2, with 5 abstentions.

Operative paragraphs 1 and 2 were adopted by 47 votes to one, with 5 abstentions.

The Liberian amendment (A/C.4/L.412) to insert an additional operative paragraph was adopted by 40 votes to 6, with 8 abstentions.

Operative paragraph 3 was adopted by 45 votes to one, with 6 abstentions.

The words "to ensure the fulfilment of its obligations and responsibilities under the Mandate" in the five-Power amendment (A/C.4/L.411) to operative under paragraph 4 was adopted by 33 votes to 2, with 16 abstentions.

The five-Power amendment (A/C.4/L.411) to operative paragraph 4 as a whole, as orally amended by Argentina, was adopted by 38 votes to 8, with 6 abstentions.

Operative paragraph 4, as amended, was adopted by 41 votes to 2, with 11 abstentions.

The first oral amendment by the Philippines to operative paragraph 5 was adopted by 36 votes to one, with 14 abstentions.

The second oral amendment by the Philippines to operative paragraph 5 was adopted by 46 votes to one, with 6 abstentions.

Operative paragraph 5, as amended, was adopted by 47 votes to one, with 5 abstentions.

Operative paragraph 6 was adopted by 46 votes to one, with 5 abstentions.

The words "to ensure the fulfilment of its obligations and responsibilities under the Mandate" at the end of the additional final paragraph proposed in the five-Power amendment (A/C.4/L.411) were adopted by 29 votes to 2, with 18 abstentions.

The additional final operative paragraph, as a whole, (A/C.4/L.411) was adopted by 38 votes to 8, with 6 abstentions.

The draft resolution as a whole, as amended, was adopted by 42 votes to 2, with 9 abstentions, and is annexed to the present report as draft resolution VIII. 18. In its report to the General Assembly, the Committee on South West Africa had drawn the attention of the General Assembly to the fact that the official listing of the Territory of South West Africa in the Universal Postal Union had been changed, on the initiative of the Union of South Africa, from a "Territory under Mandate" to a "Territory administered by the Union Government".^{7/} The Fourth Committee discussed this question at its 495th, 510th and 512th meetings on 7, 15 and 17 November respectively. It decided at its 495th meeting to elicit

^{7/} A/2913, annex II, paragraph 8.

additional information from UPU to clarify the matter. At its 512th meeting, the Committee decided to refer the reply received from the Director of UPU^{8/} addressed to the Under-Secretary for Trusteeship and Non-Self-Governing Territories, to the Committee on South West Africa for its consideration.

C. Question of the admissibility of oral hearings by
the Committee on South West Africa

19. From its 500th to its 506th meetings, the Fourth Committee considered the question of the admissibility of oral hearings by the Committee on South West Africa concerning the Territory of South West Africa.^{9/}
20. At the 501st meeting on 8 November 1955 a draft resolution (A/C.4/L.413) was submitted by Mexico, Pakistan, Syria, Thailand and the United States of America whereby the General Assembly would (1) decide that the oral hearing of petitioners by the Committee on South West Africa would not be in accordance with the procedure of the former Mandates System and was therefore not admissible; (2) consider that the above decision was without prejudice to the right of members of the Committee to hear persons who applied to them for an interview in accordance with the practice of the Permanent Mandates Commission, as referred to in the minutes of the fourth meeting of the seventh session of the Commission; and (3) authorize the Committee, when it received requests for oral hearings from petitioners, to inform such persons that they might present their views to the Committee in writing.
21. At the 503rd meeting on 9 November, the sponsors submitted a revised text (A/C.4/L.413/Rev.1) of the draft resolution, by which the General Assembly would: (1) consider that, until such time as an agreement was reached between the United Nations and the Union of South Africa, the Committee on South West Africa, in dealing with requests for oral hearings, should adhere to the practice followed under the former Mandates System, as described in the minutes of the fourth meeting of the seventh session of the Permanent Mandates Commission; and (2) authorize the Committee, when it received requests for oral

^{8/} A/C.4/316.

^{9/} A/2913/Add.2.

hearings from petitioners, to inform such persons that they might present their views to the Committee in writing, in accordance with its rules of procedure.

22. At the 505th meeting, on 10 November, the revised draft resolution was withdrawn by the sponsors.

23. At the 506th meeting, on 11 November, the representative of Mexico, on behalf of his delegation and those of Lebanon, Liberia and Thailand introduced a draft resolution (A/C.4/L.415 and Add.1) whereby the General Assembly would request the International Court of Justice to give an advisory opinion on the following question: "Is it consistent with the advisory opinion of the International Court of 11 July 1950 for the Committee on South West Africa, established by General Assembly resolution 749 A (VIII) of 28 November 1953, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa?"

24. At the same meeting, Peru submitted an amendment (A/C.4/L.416) to delete the second paragraph of the preamble of the draft resolution.

25. The draft resolution was voted upon at the same meeting as follows:

The Peruvian amendment was adopted by 24 votes to 4, with 20 abstentions.

The draft resolution, as amended, was adopted by 23 votes to 5, with 21 abstentions, and is annexed to the present report as draft resolution IX.

D. Request for a hearing before the Fourth Committee

26. In accordance with decisions taken by the Committee at its 504th and 507th meetings, on 10 and 11 November 1955, two communications^{10/} addressed to the Chairman of the Committee by the Reverend Michael Scott, who asked to make an oral statement to the Fourth Committee, were circulated to members of the Committee. This request was considered by the Committee at its 505th and 507th meetings on 10 and 11 November 1955.

27. At the latter meeting, the Committee, by a roll-call vote of 29 to 11, with 10 abstentions, decided to grant the Reverend Michael Scott a hearing. The voting was as follows:

In favour: Afghanistan, Argentina, Byelorussian Soviet Socialist Republic, Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt,

^{10/} A/C.4/313 and Add.1.

El Salvador, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Lebanon, Liberia, Pakistan, Peru, Philippines, Poland, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Australia, Belgium, Canada, Denmark, Luxembourg, Netherlands, New Zealand, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Brazil, Burma, China, Colombia, Dominican Republic, Ethiopia, Israel, Mexico, Turkey, Venezuela.

28. The Reverend Michael Scott accordingly made a statement^{11/} at the 507th meeting and questions were put to him by members of the Committee at the 508th meeting.

29. At the latter meeting, the Committee decided that the statement made by the Reverend Michael Scott should be transmitted to the Committee on South West Africa.

30. At the 510th meeting on 15 November 1955, Liberia introduced a draft resolution (A/C.4/L.417) whereby the General Assembly would: (1) take note of the statements of the Reverend Michael Scott on behalf of the Native inhabitants of South West Africa under the administration of the Union of South Africa; (2) decide to transmit to the Committee on South West Africa the statements of the Reverend Michael Scott for its study; and (3) recommend to that Committee (a) to give appropriate attention to the matters raised by the Reverend Michael Scott on behalf of the Native inhabitants of the Territory of South West Africa; and (b) to report accordingly to the General Assembly at its eleventh session.

31. At the 511th meeting on 15 November, the representative of India proposed an oral amendment to the draft resolution to add the words "and consideration as appropriate" at the end of operative paragraph 2 and to delete operative paragraph 3.

32. At the same meeting, the Fourth Committee voted upon the draft resolution and the amendments thereto as follows:

The first part of the Indian amendment was adopted by 18 votes to 8, with 21 abstentions.

The second part of the Indian amendment was adopted by 16 votes to 10, with 21 abstentions.

The draft resolution as a whole, as amended, was adopted by 27 votes to 6, with 16 abstentions, and is annexed to the present report as draft resolution X.

* * *

33. The Fourth Committee therefore recommends to the General Assembly the adoption of draft resolutions I to X below.

DRAFT RESOLUTION I

VOTING PROCEDURE ON QUESTIONS RELATING TO REPORTS AND PETITIONS
CONCERNING THE TERRITORY OF SOUTH WEST AFRICA: ADVISORY OPINION
OF THE INTERNATIONAL COURT OF JUSTICE

The General Assembly,

Having requested in resolution 904 (IX) of 23 November 1954 an advisory opinion from the International Court of Justice regarding the voting procedure to be followed by the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa,

Having noted that, in its advisory opinion of 7 June 1955,^{1/} the Court was unanimously of the opinion that the rule^{2/} that decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa should be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter was a correct interpretation of the advisory opinion of 11 July 1950,

Accepts and endorses the advisory opinion of 7 June 1955 of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa.

^{1/} I.C.J. Reports 1955, p. 67.

^{2/} Special rule F adopted under General Assembly resolution 844 (IX) of 11 October 1954.

DRAFT RESOLUTION II

PETITIONS AND COMMUNICATIONS RELATING TO THE REHOBOTH COMMUNITY
OF SOUTH WEST AFRICA

The General Assembly,

Having accepted the advisory opinion^{1/} of 11 July 1950 of the International Court of Justice on the question of South West Africa, including the opinion that petitions concerning the Territory of South West Africa are to be transmitted by the Government of the Union of South Africa "to the General Assembly of the United Nations, which is legally qualified to deal with them",

Having authorized the Committee on South West Africa, by resolution 749 A (VIII), of 28 November 1953, to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report^{2/} from the Committee on South West Africa dealing with a petition, undated, from Messrs. A.J. Beukes, P. Diegaard and A. van Wyk, members of the Rehoboth Community of South West Africa, and related communications from the Rehoboth Community, received on 22 November 1954, and from Mr. Jacobus Beukes, dated 27 November 1954,

Noting that the Government of the Union of South Africa, by a letter^{3/} dated 25 March 1954, has informed the Committee that it has "never recognized any obligation to submit ... petitions to any international body since the demise of the League of Nations",

Noting that the petitioners request that their right of self-government under the Constitution of the Rehoboth Community of 1870-1874 be restored and seek an interpretation of the legal status of the Rehoboth Community; that they request that Proclamations Nos. 28 of 1923, 31 of 1924, 9 of 1928, 29 of 1929, 17 of 1932, 5 of 1935, 20 of 1935, 16 of 1938 and 22 of 1941 issued by the Administrator of South West Africa and applied to the Rehoboth Community be declared null and void in that Community; that the boundaries of the Rehoboth Community, as

1/ I.C.J. Reports 1950, p. 128.

2/ See Official Records of the General Assembly, Tenth Session, Supplement No. 12, document A/2913.

3/ Ibid., Ninth Session, Supplement No. 14, document A/2666, Annex I (c).

allegedly recognized by the German Government, be restored, and that certain lands allegedly alienated unlawfully from the Rehoboth Community be returned to that Community,

A

With respect to the status of the Rehoboth Community:

Noting that a Treaty of Protection and Friendship was concluded in 1885 between the German Government and the Rehoboth Community, as an agreement between two Governments, whereby the German Government agreed to assume the protection of the Rehoboth Community, while recognizing the rights and freedom which the Rehobothians had established for themselves,

Noting that the German Government abrogated this Treaty in 1915, when the Rehobothians refused to join German forces and to provide men to guard captured Union of South Africa prisoners during the First World War,

Noting that the Administrator of South West Africa as representing the Government of the Union of South Africa, and the Kapitein and members of the Raad of the Rehoboth Community for themselves and their lawful successors as representing the Rehoboth Community, concluded an Agreement on 17 August 1923 "regulating the future administration by the Government of the Union of South Africa in its capacity as Mandatory of the Territory situate within the district of Rehoboth occupied by the said Community known as the Gebiet"; that this Agreement was ratified and confirmed by Proclamation No. 28 of 1923 and came into force on 1 October 1923,

Noting further that this Agreement provides, inter alia, that:

(a) Subject to the provisions of the Agreement, "the Administration concedes to the Rehoboth Community the right of self-government within the Gebiet according to the laws presently to be found in the Law Book of the Raad of the Rehoboth Community and such additions thereto or amendments thereof as may from time to time lawfully be enacted by the Raad of the Rehoboth Community", subject to the assent of the Administrator to any law passed by the Raad after 1 October 1923,

(b) "The Administrator shall, after consultation with the Raad of the Rehoboth Community, possess the power to legislate for the Gebiet and to extend thereto the operation of any law, whether at present in force in the Territory of South West Africa or hereafter enacted, if he considers such legislation or extension to be expedient or desirable in the interest of either the Territory of South West Africa or the Gebiet",

Noting that in 1924 political dissension within the Rehoboth Community gave rise to a situation which, in the view of the Administration, seriously endangered the maintenance of law, order and good government both within the Gebiet and in the Territory of South West Africa, and that as a consequence the Administrator issued Proclamation No. 31 of 1924, declaring that the Kapitein and Raad and all persons acting under their authority should cease to function within the Gebiet and vesting all their powers, functions and duties in the Magistrate of the Rehoboth District who was to exercise these powers, functions and duties "in accordance with the laws of the said Community at present in force within the Gebiet and in conformity with the provisions" of the Agreement of 17 August 1923,

Noting further, that in the application of laws to the Gebiet subsequent to the issuance of Proclamation No. 31 of 1924, the Administrator in each instance cited the 1923 Agreement, and referred to his power thereunder to apply laws to the Gebiet after consultation with the Raad, to the transfer of the functions and powers of the Raad to the Magistrate and, consequently, to his consultation with the Magistrate with respect to the application of the law in question,

1. Decides to inform the petitioners that the Territory of South West Africa remains a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920, and that the provisions of the Mandate and of Article 22 of the Covenant of the League of Nations accordingly apply to the Rehoboth Community, which constitutes a part of the Mandated Territory;
2. Considers that, subject to the terms of the Mandate, the administration by the Union of South Africa of the territory known as the Rehoboth Gebiet continues to be regulated by the Agreement of 17 August 1923 concluded between the Administrator of the Mandated Territory as representing the Government of

the Union of South Africa on the one part and the Kapitein and members of the Raad of the Rehoboth Community for themselves and their lawful successors, as representing the Rehoboth Community on the other part;

3. Considers that the permanent transfer of the powers, functions and duties from representatives of the Rehoboth Community duly elected under the laws of that Community to an official appointed as Magistrate of the Rehoboth District would not be in accordance with the terms of the Agreement of 17 August 1923;

4. Further considers that consultation by the Administrator with the Magistrate of the Rehoboth District for the purpose of applying laws to the Rehoboth Gebiet subsequent to 1924 does not fulfil the condition of the Agreement of 17 August 1923 for consultation with the Raad of the Rehoboth Community;

5. Recommends therefore that the Union of South Africa, as the Mandatory Power, take the necessary steps to correct this situation.

B

With respect to the boundaries of the Rehoboth Gebiet:

Noting that the boundaries of the Rehoboth Gebiet were defined in the schedule to the Agreement of 17 August 1923 and appear to have been accepted by the Kapitein and members of the Raad of the Rehoboth Community for themselves and their lawful successors as representing the Rehoboth Community,

Is of the opinion that any claims which the Rehoboth Community may have regarding the alleged boundaries of the Gebiet prior to the Agreement of 17 August 1923 appear to have been resolved by that Agreement.

C

With respect to the claims of the Rehoboth Community to certain lands within the Gebiet:

Noting that these claims have been investigated by successive commissions of enquiry, the first of which was appointed in 1922,

Recommends that the Government of the Union of South Africa, as the Mandatory Power, make every effort toward an early and equitable settlement of these claims.

DRAFT RESOLUTION III

PETITION AND RELATED COMMUNICATIONS FROM HOSEA KUTAKO, DAVID ROOS AND
ERASTUS AMGABEB CONCERNING SOUTH WEST AFRICA

The General Assembly,

Having accepted the advisory opinion^{1/} of 11 July 1950 of the International Court of Justice on the question of South West Africa, including the opinion that petitions concerning the Territory of South West Africa are to be transmitted by the Government of the Union of South Africa "to the General Assembly of the United Nations, which is legally qualified to deal with them",

Having authorized the Committee on South West Africa, by resolution 749 A (VIII), of 28 November 1953 to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report^{2/} from the Committee on South West Africa dealing with a petition, dated 2 September 1954, from Hosea Kutako, David Roos and Erastus Amgabeb, and a related petition, dated 14 January 1955, from Hosea Kutako,

Noting that the petitioners request that the United Nations submit the question of the status of South West Africa to the International Court of Justice for its compulsory jurisdiction,

Noting further that the petitioners raise questions relating to the participation of the African people of the Territory in the political development of the Territory, the application of pass laws and racially discriminatory laws, educational facilities, and the alleged refusal on the part of the Administration to permit common meetings for all tribes,

Decides to inform the petitioners that, according to the advisory opinion of 11 July 1950 of the International Court of Justice, (a) "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 continues to have the international obligations stated in Article 22 of the Covenant of the

1/ I.C.J. Reports 1950, p. 128.

2/ See Official Records of the General Assembly, Tenth Session, Supplement No. 12, document A/2913.

League of Nations and in the Mandate for South West Africa"; (c) "competence to determine and modify the international status of South West Africa rests with the Union of South Africa acting with the consent of the United Nations"; and that the General Assembly, by resolution 449 A (V) of 13 December 1950, accepted the advisory opinion of the International Court of Justice on the question of South West Africa;

Noting the observations of the Committee on South West Africa with respect to questions raised by the petitioners relating to conditions in the Territory of South West Africa,

Decides to transmit to the petitioners the report and observations of the Committee on South West Africa at its second session regarding conditions in the Territory of South West Africa.

DRAFT RESOLUTION IV

PETITION AND RELATED COMMUNICATION FROM THE REVEREND T.H. HAMTUMBANGELA
CONCERNING SOUTH WEST AFRICA

The General Assembly,

Having accepted the advisory opinion^{1/} of 11 July 1950 of the International Court of Justice on the question of South West Africa, including the opinion that petitions concerning the Territory of South West Africa are to be transmitted by the Government of the Union of South Africa "to the General Assembly of the United Nations, which is legally qualified to deal with them",

Having authorized the Committee on South West Africa, by resolution 749 A (VIII), to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report^{2/} from the Committee on South West Africa dealing with a petition, dated 5 October 1954, and a related communication dated 19 February 1955, from the Reverend T.H. Hamtumbangela,

Noting that the petitioner requests that the question of the future status of the Territory of South West Africa be submitted to the International Court of Justice for decision,

Noting further that the petitioner raises questions concerning the racially discriminatory measures applied against the non-European population of the Territory,

Decides to inform the petitioner that, according to the advisory opinion of 11 July 1950 of the International Court of Justice, (a) "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 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"; (c) "competence to determine and modify the international status of South West Africa rests with

1/ I.C.J. Reports 1950, p. 128.

2/ See Official Records of the General Assembly, Tenth Session Supplement No. 12, document A/2913.

the Union of South Africa acting with the consent of the United Nations"; and that the General Assembly, by resolution 449 A (V) of 13 December 1950, accepted the advisory opinion of the International Court of Justice on the question of South West Africa,

Noting the observations of the Committee on South West Africa with respect to discriminatory measures applied in the Territory against the non-European population,

Decides to transmit to the petitioner the report and observations of the Committee on South West Africa at its second session regarding conditions in the Territory of South West Africa.

DRAFT RESOLUTION V

PETITION FROM MISS MARGERY F. PERHAM CONCERNING
SOUTH WEST AFRICA

The General Assembly,

Having accepted the advisory opinion^{1/} of 11 July 1950 of the International Court of Justice on the question of South West Africa,

Having authorized the Committee on South West Africa by resolution 749 A (VIII) of 28 November 1953, to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received^{2/} from the Committee on South West Africa dealing with a petition dated November 1953 from Miss Margery F. Perham,

Noting the petitioner's statement that a Native school principal of South West Africa has been unable to avail himself of a scholarship at Oxford University because the Government of the Union of South Africa has refused to grant him a passport and has given no reason for its action,

Noting that education forms the foundation of all development in the Territory and that educational facilities for Natives are still inadequate,

1. Is of the opinion that the withholding of a passport from a qualified student for the purpose of studying abroad is not only a direct interference in the educational and general advancement of an individual but a hindrance to the educational development of the Territory of South West Africa which was entrusted, under the Covenant of the League of Nations, to the administration of the Union of South Africa;
2. Regrets that the Union Government did not respond to the appeal addressed to it by the representatives of such an eminent educational institution as Oxford University;
3. Invites the President of the General Assembly to use his good offices with the Government of the Union of South Africa in order to assist Mr. Himumuine to obtain a passport and all other administrative facilities so that he may avail himself of the scholarship granted to him by Oxford University.

1/ I.C.J. Reports 1950, p. 128.

2/ See Official Records of the General Assembly, Ninth Session, Supplement No. 14, document A/2666.

DRAFT RESOLUTION VI

PETITION FROM JARIRETUNDU KOZONGUIZI CONCERNING
SOUTH WEST AFRICA

The General Assembly,

Having accepted the advisory opinion^{1/} of 11 July 1950 of the International Court of Justice on the question of South West Africa,

Having authorized the Committee on South West Africa, by resolution 749 A (VIII) of 28 November 1953, to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report^{2/} from the Committee on South West Africa dealing with a petition dated 5 August 1954 from Jariretundu Kozonguizi,

Noting the petitioner's allegations that:

(a) Since the Government of the Union of South Africa assumed the administration of the Territory of South West Africa, the indigenous people have suffered under oppressive legislation and have not developed in any sphere,

(b) In spite of their repeated objections to incorporation under the Government of the Union of South Africa, the Africans of South West Africa were placed under the direct administration of the Minister of Native Affairs in the Union Government,

(c) The enforcement of the Bantu Education Act in South West Africa, as contemplated by members of the Union Parliament, would virtually eliminate African education in the Territory, where at present there are no more than six non-Europeans who have gone beyond high school standard,

(d) The Administrator of South West Africa, without giving any reasons, would not allow or sanction the establishment of a proposed student body purely concerned with the education of the people,

1/ I.C.J. Reports 1950, p. 128.

2/ See Official Records of the General Assembly, Ninth Session, Annexes, agenda item 34, document A/2666/Add.1.

Noting the observations of the Committee on South West Africa with respect to education in the Territory and with respect to a bill proposing the transfer of control over Native affairs from the Administrator of South West Africa to the Minister of Native Affairs of the Union,

Noting that the South West Africa Native Affairs Administration Act, 1954 (Act No. 56 of 1954) was applied to the Territory on 30 June 1954 and came into operation on 1 April 1955,

Decides to transmit to the petitioner those sections of the report and observations of the Committee on South West Africa dealing with education and the transfer of control over Native affairs, where the Committee expresses its apprehensions concerning these matters.

DRAFT RESOLUTION VII

STATUS OF THE TERRITORY OF SOUTH WEST AFRICA

The General Assembly,

Recalling that, by its resolutions 65 (I) of 14 December 1946, (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950, 570 B (VI) of 19 January 1952, 749 B (VIII) of 28 November 1953 and 852 (IX) of 23 November 1954, it had recommended that the Mandated Territory of South West Africa be placed under the International Trusteeship System, and that it had 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,

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 mentioned above 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 present 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.

DRAFT RESOLUTION VIII

REPORT OF THE COMMITTEE ON SOUTH WEST AFRICA

The General Assembly,

Having established by resolution 749 A (VIII) of 28 November 1953, "until such time as an agreement is reached between the United Nations and the Union of South Africa, a Committee on South West Africa",

Having requested that Committee to "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" and to "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",

Having considered, in accordance with the special rules set forth in General Assembly resolution 844 (IX) of 11 October 1954, the second report and observations of the Committee on South West Africa regarding conditions in the Territory^{1/},

1. Expresses its appreciation of the work of the Committee on South West Africa;
2. Takes note of the observations of the Committee concerning conditions in the Territory;
3. Approves the report^{2/} of the Committee on South West Africa;
4. Draws the attention of the Government of the Union of South Africa to the Committee's report and observations;
5. Urges the Government of the Union of South Africa to give serious consideration to the observations and recommendations of the Committee and to study the possibility of adopting measures to implement them in order to ensure the fulfilment of its obligations and responsibilities under the Mandate;

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 12, document A/2913, annex II.

^{2/} Ibid., Supplement No. 13, document A/2913.

6. Invites the Government of the Union of South Africa to co-operate with the Committee on South West Africa and, in particular, to submit to the Committee reports and such petitions as may be received on its administration of the Territory of South West Africa, and to assist the Committee on South West Africa in the examination of such reports and petitions, or such information and documentation as may be available to that Committee;
7. Requests the Committee on South West Africa in the preparation of its next report to take into account the discussions in the Fourth Committee at the tenth session of the General Assembly;
8. Further requests the Committee on South West Africa, in the preparation of its next and future reports, to include its recommendations on each aspect of conditions in the Territory for such particular action as it considers the Government of the Union of South Africa should take to ensure the fulfilment of its obligations and responsibilities under the Mandate.

DRAFT RESOLUTION IX

QUESTION OF THE ADMISSIBILITY OF ORAL HEARINGS
BY THE COMMITTEE ON SOUTH WEST AFRICA

The General Assembly,

Having been requested by the Committee on South West Africa to decide whether or not the oral hearing of petitioners on matters relating to the Territory of South West Africa is admissible before that Committee (A/2913/Add.2),

Having instructed the Committee on South West Africa, in resolution 749 A (VIII) of 28 November 1953, to examine petitions "as far as possible in accordance with the procedure of the former Mandates System",

Requests the International Court of Justice to give an advisory opinion on the following question:

"Is it consistent with the advisory opinion of the International Court of Justice of 11 July 1950 for the Committee on South West Africa, established by General Assembly Resolution 749 A (VIII) of 28 November 1953, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa?"

DRAFT RESOLUTION X

HEARING OF THE REVEREND MICHAEL SCOTT

The General Assembly,

Having granted an oral hearing to the Reverend Michael Scott on behalf of the Native Inhabitants of the Territory of South West Africa under Union of South Africa administration,

1. Takes note of the statements of the Reverend Michael Scott on behalf of the Native inhabitants of South West Africa under the Union of South Africa administration;
2. Decides to transmit to the Committee on South West Africa the statements of the Reverend Michael Scott for its study and consideration as appropriate.
