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CONTENTS

Chairman: Miss Angie BROOKS (Liberia).

AGENDA ITEM 47

Question of South West Africa (continued):

(a) Report of the Committee on South West Africa (A/4926, A/4957, A/AC.73/4, A/AC.73/L.15, A/C.4/L.711 and Corr.1, A/C.4/L.712);

(b) Assistance of the specialized agencies and of the United Nations Children's Fund in the economic, social and educational development of South West Africa: reports of the agencies and of the Fund (A/4956 and Add.1)

GENERAL DEBATE (continued)

1. Mr. ZIKRIA (Afghanistan) expressed his delegation's indignation at the obstinacy with which the Government of South Africa was trying to impose its will on the United Nations and following a racial policy in regard to the indigenous inhabitants of South West Africa that was condemned by the conscience of the world. The drafters of the Covenant of the League of Nations, in instituting the Mandates System, had reconciled two principles of modern public law: the right of peoples to self-determination and the principle of the continuity of public services in the interest of the inhabitants of territories not yet capable of self-government. To that end, the League of Nations had conferred upon His Britannic Majesty, to be exercised on his behalf by the Government of the Union of South Africa, a Mandate for South West Africa, in accordance with Article 22 of the Covenant. It was most regrettable that the South African Government had failed in its mission and had abused the confidence of the international community, as was apparent from the reports of the Committee on South West Africa (A/4926, A/4957). That Government maintained that the Mandate had lapsed by virtue of the liquidation of the League of Nations and it was trying to annex an entire people in defiance of their legitimate aspirations to freedom and independence.

2. Mr. Louw, the South African Minister for Foreign Affairs, had once again maintained that consideration of the question of South West Africa by the United Nations was a violation of the sub judice principle, since the question was at present before the International Court of Justice. He had recalled in that connexion that in the Anglo-Iranian Oil Company case the Security Council had adjourned its debate,[1] invoking that principle. In the opinion of the Afghan delegation, there was as yet no established jurisprudence on the applicability of the sub judice principle to relations between the General Assembly and the International Court, and the questions of South West Africa and the Anglo-Iranian Oil Company were two totally different cases. Moreover, it would be contrary to the spirit of law to apply the sub judice principle in the case of South West Africa, since it would prolong the physical and moral sufferings of the people of the Territory.

3. As at the previous session, the representative of South Africa had sought, in disparaging terms and by tendentious allusions, to discredit the petitioners in world opinion. By its proposal to invite three persons of international repute to visit South West Africa, South Africa was also endeavouring to cast discredit on the Committee on South West Africa, which was further proof that it was not willing to co-operate with the United Nations but was seeking by devious means to impose its own will on the Organization. The Afghan delegation would therefore vote against any draft resolution inspired by such an attitude. In order to justify the arbitrary and illegal refusal of his Government to grant entry visas for South West Africa to the members of the Committee on South West Africa, Mr. Louw had said that the Territory remained under the authority of the Government of South Africa and that, according to the terms of the Mandate itself, it was administered by that Government as an integral portion of South Africa. He had thus implied that the League of Nations had considered the Territory to belong to South Africa. It was indeed regrettable that the country of Field-Marshal Smuts, one of the promoters of the Mandate System, should refuse to recognize the ineluctable evolution of the peoples towards freedom and independence.

4. His delegation tried to judge international problems objectively and impartially. It was convinced that no State could arrogate to itself the right to deny freedom and independence to a people that had come under colonial domination. It considered that, in the case of a people subjected to foreign domination, the principle of self-determination should come before any other consideration, and the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) confirmed it in that conviction, since it stipulated the immediate transfer of all powers, without any conditions or reservations, to the peoples of territories

[1] See Official Records of the Security Council, Sixth Year, 565th meeting.

that had not yet attained independence, in accordance with their freely expressed will and desire, without any distinction as to race, creed, or colour.

5. The history of South West Africa, and the very spirit and letter of the Mandate, gave its inhabitants the right to benefit from the provisions of the Declaration, and the United Nations was morally and legally obliged to take vigorous and effective steps to ensure their rapid accession to freedom and independence. It would in fact be illogical and inadmissible if, while adopting measures to liberate the peoples of other dependent territories, the United Nations continued to bargain with South Africa over the fate of the indigenous inhabitants of South West Africa.

6. His delegation was not opposed to the idea of revoking the Mandate, but it considered that the United Nations, in adopting the Declaration on the granting of independence, had ipso facto revoked the Mandate under which South Africa was occupying the Territory in question.

7. He expressed the hope that South Africa would reconsider its attitude and accept the decisions of the majority of the Members of the United Nations; by signing the Charter, which was pre-eminently a social compact, it had agreed, with the reservation embodied in Article 2, paragraph 7, to respect those decisions.

8. The Afghan delegation, for its part, would vote in favour of the six-Power draft resolution (A/C.4/L.711 and Corr.1).

9. Mr. KIANG (China) held the view that, by invoking the sub judice principle, the Government of South Africa implicitly recognized that its Mandate for South West Africa was still in force. It could not, in fact, invoke that principle without fully subscribing to the provisions of the second paragraph of article 7 of the Mandate, which stated: "The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice...." Thus the application of the sub judice principle did not release South Africa from its obligation to accept the competence of the Court, in accordance with the terms of article 7 of the Mandate, Article 37 of the Statute of the International Court of Justice and Article 80, paragraph 1, of the Charter of the United Nations. Consequently, the Chinese delegation saw no necessity for requiring an answer from the Government of South Africa to the question whether it was willing to accept the Court's decision in the dispute between it and the Governments of Liberia and Ethiopia.

10. Even if the Committee recognized that the sub judice principle was applicable, however, it could not be prevented from considering conditions in South West Africa and examining petitions, for those were elements of the supervisory functions exercised by the United Nations and no argument could interrupt or suspend their normal course. Admittedly, the situation would be different if, in exercising the supervisory functions conferred on it by the Mandate and the Charter, the United Nations were to adopt certain measures which went beyond the scope of the similar functions exercised by the Permanent Mandates Commission. In that event, such measures would have to be suspended pending a decision by the International Court of Justice on the eleven submissions of the Liberian Government.[2] In particular, in its submission D that Government stated that the Union had substantially modified the terms of the Mandate without the consent of the United Nations, that such modification constituted a violation of article 7 of the Mandate and Article 22 of the Covenant, and that United Nations consent was a necessary and prior condition to attempts on the part of the Union, directly or indirectly to modify the terms of the Mandate. In its advisory opinion of 7 June 1955,[3] the Court had stated that the function of supervision exercised by the General Assembly took the form of action based on the reports and observations of the Committee on South West Africa, whose functions were analogous to those exercised by the Permanent Mandates Commission. He pointed out in that connexion that the South African proposal, announced by the Foreign Minister at the 1218th meeting, whereby South Africa would invite three former Presidents of the General Assembly to visit South West Africa and conduct an investigation on the spot appeared to conform to the theory that the sub judice principle did not prevent the General Assembly from exercising supervision over the administration of the Mandate for South West Africa. Furthermore, the South African Government itself had recognized that it had continued to have international responsibilities under the Mandate after the dissolution of the League of Nations, as evidenced by the memorandum addressed to the Secretary-General on 17 October 1946,[4] the statement made by Field-Marshal Smuts, then Prime Minister of the Union, to the Fourth Committee on 4 November 1946[5] and a letter of 23 July 1947 addressed to the Secretary-General[6] referring to a resolution in which the South African Parliament had declared that the South African Government should continue to send reports to the United Nations as it had done to the League of Nations under the Mandate.

11. He went on to consider various recommendations contained in paragraphs 162 to 164 of the report (A/4926) submitted by the Committee on South West Africa, whose work he commended. At the 1226th meeting the Mexican representative had tried to find a legal basis for the recommendation that the Mandate for South West Africa should be revoked. The Chinese delegation wondered whether the United Nations, acting alone, was competent to modify the international status of the Territory, since the South African Republic, acting alone, was not competent to determine or to modify that status without the agreement of the United Nations. It was true that the International Court of Justice had already replied to that question to some extent when it had stated in its advisory opinion of 11 July 1950[7] that South Africa

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[2] See International Court of Justice, Application instituting proceedings, South West Africa Case (Liberia v. Union of South Africa), 1960, General List, No. 47, pp. 18-22.

[3] South-West Africa—Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955, p. 67. Transmitted to Members of the General Assembly by a note of the Secretary-General (A/2918).

[4] See Official Records of the General Assembly, Second part of the first session, Fourth Committee, Part I, annex 13, p. 199.

[5] Ibid., annex 13a, p. 235.

[6] Ibid., Second Session, Fourth Committee, annex 3a, p. 133.

[7] International Status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128. Transmitted to Members of the General Assembly by a note of the Secretary-General (A/1362).

was competent to determine and modify the international status of the Territory acting with the consent of the United Nations. The situation might be very different if the Court replied in the affirmative to the questions submitted to it by the Liberian Government, but as long as it had not done so the question could be asked whether the United Nations was entitled to decide to revoke the Mandate. In the eyes of the delegations that had voted in favour of General Assembly resolution 1565 (XV), which took note of the contentious proceedings instituted before the Court, any attempt to revoke the Mandate would undermine the foundations of that legal action, the purpose of which was to ensure that South Africa fulfilled the obligations that it had assumed. The Chinese delegation considered that it would be a political blunder to revoke the Mandate and that it was by continuing to recognize the existence of the Mandate that the interests of the population of South West Africa could best be served and protected. The petitioners should consider what the consequences would be if the Mandate were to be revoked. The Committee on South West Africa had also recommended that the United Nations should lend its assistance to the indigenous population of the Territory and should draw up a fellowship programme designed to provide training for the greatest possible number of people. Those recommendations deserved the support of the Fourth Committee and should be given priority.

12. In conclusion, he wished to appeal to South Africa. It was regrettable that that country had seen fit to apply its policy of apartheid to South West Africa. If it insisted on pursuing that course, it would run the risk of disqualifying itself for the responsibility of promoting the moral and social well-being of the inhabitants of the Territory. A great many South Africans had already understood that the security and well-being of peoples of all races were inextricably interlinked. Their good will was essential for ensuring stability, security and progress in that vital part of Africa.

13. Mr. ROS (Argentina) considered that the South African proposal announced by the Minister for Foreign Affairs was unacceptable in the form in which it had been made, for to accept it would be to disregard both the draft resolutions adopted by the General Assembly at past sessions and the work of the Committee on South West Africa. Some representatives, amongst them those of the United Kingdom, New Zealand and Sweden, had expressed the opinion that the idea of a committee composed of three former Presidents of the General Assembly was worth considering, for it had its positive aspects which might pave the way for an impartial inquiry into conditions in South West Africa. The Argentine delegation wondered what point there would be in taking up the suggestion made by the South African delegation in order to bring it within the framework of the action undertaken by the United Nations, in view of the fact that in all likelihood the South African Government would not agree to such a formula. It was scarcely likely that South Africa would consent to have the competence of the proposed committee changed as far as its relations with the United Nations were concerned. Consequently, there seemed no reason to try to embody that proposal in a resolution, unless of course the Fourth Committee wished once again to test the good faith of South Africa and to find out whether the attitude of that country had undergone any change. If that was the case, the proposed action should be undertaken within the framework of the United Nations and should in no way prejudice the fundamental question before the Committee.

14. For those reasons, the Argentine delegation could not support the United Kingdom draft resolution (A/C.4/L.712), which would only provide a procedural solution of the problem. It felt that other, more direct, methods should be found.

15. With regard to draft resolution A/C.4/L.711 and Corr.1, the Argentine delegation considered that it reflected the proper attitude to adopt towards the problem before the United Nations. There was room, however, for a number of improvements which would enable the United Nations to gauge, for the last time, the true intentions of the South African Government in the matter. The aim of the Committee was to succeed in putting an end to the Mandate for South West Africa and it was important that no possibility, however fraught with uncertainty it might seem, should be neglected, even if there was little hope that any positive results would be achieved. If the sponsors of draft resolution A/C.4/L.711 and Corr.1 considered that such a final attempt would be useless, the Argentine delegation would be ready to vote in favour of the draft resolution as it stood.

16. Mr. KARSENO (Indonesia) said that the situation in the Territory was growing worse and worse on account of the policy pursued by South Africa and of its refusal to comply with the Mandate and to cooperate with the United Nations. The recommendations made in the report of the Committee on South West Africa (A/4926) could and should serve as a guide to the Fourth Committee in its search for a solution to the problem; the reasons given in the report showed that the recommendations were valid and that they should be put into effect if the needs and wishes of the indigenous population were to be met.

17. Much had been said about the legal aspects of the problem of South West Africa. The Indonesian delegation did not consider that a decision by the International Court of Justice would solve the problem and help the people to gain freedom and independence. From the statements made by the South African representative, it was clear that his Government was challenging the jurisdiction of the Court and that the very question of the recognition of the existence of the Mandate by South Africa was subject to dispute before the Court. In such circumstances, how could it be expected that the judgement of the Court would constitute a solution which would be acceptable both to South Africa and to the United Nations? The South African Government's final objective was to eliminate the Mandate by incorporating the Territory into South Africa, while that of the United Nations was to liberate the indigenous people and to give them independence. The Indonesian delegation attached the utmost importance to the statements made at the 1226th meeting by the Liberian and Mexican representatives regarding the attitude to be adopted by the United Nations while the case was pending before the Court.

18. The South African Government had offered to invite a committee of three members to go to South West Africa and study conditions there. Originally the South African Government, in a letter of 10 May 1961 (A/4926, annex I, section 4), had offered to invite one man only, who was to have been designated by agreement with the President of the General Assembly. Under the new proposal, the committee—now a triumvirate—would be appointed by South Africa

alone and would report direct to the South African Government. It was thus apparent that South Africa opposed, as a matter of principle, any decision of the United Nations that would run counter to its own wishes. It had even voted against General Assembly resolution 1566 (XV), which in no way prejudiced the case before the International Court of Justice. There seemed little possibility that the South African proposal and the wishes of the United Nations could be reconciled. The fact that the South African representative had said that the appointment of the committee was the only course open to his Government showed that the latter ruled out any intervention by the United Nations to help the inhabitants of the Mandated Territory. For those reasons, the Indonesian delegation did not consider that the United Kingdom draft resolution (A/C.4/L.712) represented a solution, and as that draft also tended to challenge the report of the Committee on South West Africa the Indonesian delegation could not endorse it.

19. No matter what might be said to the contrary, the problem of South West Africa was also a colonial problem, and its ultimate solution would therefore be found in the accession of the people of South West Africa to independence. Anything which might hinder the achievement of that aim would be opposed by the forces released through the implementation of the Declaration on the granting of independence to colonial countries and peoples. Meanwhile, the situation in the Territory was deteriorating, as the Committee on South West Africa had noted during its journey to Africa. The concern expressed by the Committee on 5 July 1961 in a telegram to the Secretary-General (A/4926, annex III) had been echoed in its memorandum of 25 July to the Security Council (A/4926, annex IV, section 2), in which it had stated that "the continuing application of the 'apartheid' policy in South West Africa and the continued defiance by the South African Government of the authority of the United Nations over the Mandated Territory had created such a tense situation that only intervention by the United Nations can prevent armed racial conflict in Africa". Even the Minister for Foreign Affairs of South Africa had confirmed the gravity of the situation when, at the 1226th meeting, he had qualified as "serious" a statement by the representative of Ghana illustrating the spontaneous reaction of the coloured peoples of the whole world towards South Africa's official policy of racial segregation and their detestation of that policy. That reaction was certainly not the cause of the threat to international peace and security, but the logical consequence of the humiliating action taken by South Africa against the black people of Africa. As the South African Government denied that there was a plan for the systematic extermination of the population of South West Africa, he asked the South African representative whether he thought that his Government was serving the interest of that population by herding it into small reservations and refusing it any freedom of movement.

20. In view of the explosive situation which existed in the Territory, and for the reasons set forth in the report of the Committee on South West Africa, it was vital for the Security Council to consider the problem of South West Africa, as recommended in the Committee's report, so as to enable the United Nations to establish a presence in the Territory, protect the lives of its inhabitants and ensure the implementation of the Committee's other recommendations. The indigenous people needed United Nations help. So long as the United Nations was kept outside the borders of the Territory, and so long as a white minority Administration remained in power, the United Nations could do nothing to relieve their suffering.

21. Mr. CARPIO (Philippines), explaining how he would vote on the draft resolutions now before the Committee and on any further proposals that might be submitted, said that his delegation would vote for draft resolution A/C.4/L.712 on condition that the United Kingdom delegation agreed to make certain changes in the text.

22. First, for the sake of grammatical accuracy, the word "was" in the English text of the third preambular paragraph should be replaced by "were". He proposed that the word "Mandatory" in the same paragraph should be replaced by the words "His Britannic Majesty, for and on behalf of the Government of South Africa". That new wording would be more in accordance with the terms of the Mandate.

23. In order to stress the importance of the responsibilities of the United Nations in respect of South West Africa, he would like the word "grave" to be inserted before the word "responsibilities" in the fourth preambular paragraph.

24. In the fifth preambular paragraph, the expression "future of their own choice" was too vague and had been used in the past in cases of annexation or partition. His delegation considered that the future of the peoples of South West Africa had already been settled by the Mandate itself, which was based on Article 22 of the Covenant of the League of Nations; the provisions of that Article had been restated more explicitly in Article 73 of the Charter of the United Nations. That future was independence, and he could not conceive of any other. Furthermore, his attitude was in accordance with the provisions of General Assembly resolution 1514 (XV). For those reasons, the fifth preambular paragraph should be deleted.

25. With regard to the operative part of the draft resolution, he felt that the work of the Committee on South West Africa deserved more than simply to be taken note of. He therefore requested the addition, at the end of operative paragraph 1, of the words: "and approves all the findings, conclusions and recommendations therein contained". That wording would more satisfactorily reflect the attitude of the Members of the United Nations with regard to the report of the Committee on South West Africa.

26. Operative paragraph 2 should be deleted for the reasons he had already given in connexion with the fifth preambular paragraph. If the paragraph was put to the vote, his delegation would vote against it.

27. Operative paragraph 3 provided that a study should be undertaken by a special commission of five members to be appointed by the President of the General Assembly. That commission was to deal with the problem of South West Africa. But that was precisely what the Committee on South West Africa had been doing for years, and its efforts had culminated in the special report which was at present before the Fourth Committee (A/4926). The proposed study would therefore be superfluous and he asked, consequently, that operative paragraph 3 should be deleted. As a member of the Committee on South West Africa, he would regard the institution of a special commission as an insult to the existing committee.

28. The independent committee of three members referred to in operative paragraph 4 would be ap-

pointed unilaterally by the South African Government. It would thus seem to be a matter within the domestic jurisdiction of a State, and the United Nations could not intervene in a matter of that kind. He therefore asked that operative paragraph 4 should also be deleted. In that connexion, the proposal made during the present session by the South African Minister for Foreign Affairs was an improvement on the procedure followed by South Africa some two years previously when it had appointed a commission consisting of one man only to investigate the events that had taken place at the Windhoek Location on the night of 10-11 December 1959.

29. If operative paragraphs 2, 3 and 4 were deleted, his delegation would also request the deletion of operative paragraphs 5, 6, 7 and 8 for the same reasons. The deletion of operative paragraphs 5 and 6 would have the additional advantage of eliminating the confusion resulting from the use of two different expressions for the same body which was described at one point as a committee and at another as a commission.

30. The South African Minister for Foreign Affairs had told the Fourth Committee that the independent committee he contemplated would comprise three past Presidents of the General Assembly, in other words, three elderly men. Apart from the fact that that proposal ignored the efforts made by the Committee on South West Africa during recent years, it was unlikely that three elderly men could do in three months what the Committee on South West Africa had been unable to do over a period of several years. The United Nations would thus be paralysed and the status quo would be maintained in South West Africa indefinitely.

31. He was sure that, if the United Kingdom representative accepted his delegation's proposed amendments to draft resolution A/C.4/L.712, it would be adopted unanimously by the Members of the General Assembly, even including South Africa.

32. Draft resolution A/C.4/L.711 and Corr.1 dealt only with the offer made by the Government of South Africa. But, as his delegation had already pointed out, that was a domestic matter with which the United Nations could not concern itself. He hoped that, after the General Assembly had adopted draft resolution A/C.4/L.712, amended in accordance with his delegation's proposals, the sponsors of draft resolution A/C.4/L.711 and Corr.1 would agree to withdraw their proposal.

33. With regard to any draft resolutions which might subsequently be submitted, his delegation would be willing to support any constructive text which was likely to lead to a satisfactory solution of the problem of South West Africa while safeguarding the prestige of the United Nations. For fifteen years, South Africa had been refusing to listen to appeals by the United Nations, and the time had come to settle the matter once and for all.

34. Mr. EASTMAN (Liberia) said it was clear from the statements of the representatives of China and Argentina that there was still come confusion concerning the position of Liberia with respect to the sub judice principle. Ethiopia and Liberia had instituted proceedings with the International Court of Justice solely on the ground that South Africa had not complied with the provisions of the Mandate. He wished to re-emphasize that there were two aspects to that question, one political and the other legal, and that those two aspects could be treated concurrently.

35. Turning to draft resolution A/C.4/L.712, he said that Liberia would vote for that proposal if the United Kingdom would agree to amend it by inserting the words "to be appointed by the President of the General Assembly" after the words "of three members" in operative paragraph 4. In view of the large number of resolutions which had been adopted but never carried out, the effective implementation of such a resolution might be extremely useful.

36. He recalled that, at the 1227th meeting, he had again asked the representative of South Africa if the South African Government would agree to issue travel documents to witnesses living in the Territory who might be summoned before the International Court of Justice. He had just received a cable which showed how important it was to obtain an answer on that point.

37. Mr. LOUW (South Africa) noted that the representative of Liberia had himself been obliged to admit that other delegations besides that of South Africa had had difficulty in fully understanding Liberia's position on the sub judice principle.

38. At the 1226th meeting, the representative of Liberia had made a statement on the subject and had been good enough to provide him with a copy of the text. It was a laboured attempt to get away from the sub judice rule. Ethiopia and Liberia were obviously worried by the attitude which South Africa had adopted on that question since 1960. According to the statement of the representative of Liberia, South Africa "piously" invoked that rule. That term might conceivably be appropriate in a political debate, but certainly not in a legal discussion, since it carried an unfortunate suggestion of hypocrisy, and the matter at issue was too serious and fraught with too many consequences for its use to be admissible.

39. The representative of Liberia had said that South Africa had advanced one single case in support of its attitude, that of the Anglo-Iranian Oil Company, and that even that case involved only a question of jurisdiction. He would remind the Committee that he had dealt at some length with the sub judice rule at the previous session (1049th meeting), after he had consulted the legal adviser to the South African delegation, who was an authority on international law. The United Kingdom representative had then also made an important statement on that subject and he had undoubtedly consulted the legal adviser to the Foreign Office before making it; the latter would fully confirm South Africa's view of the question.

40. Moreover, in connexion with the Anglo-Iranian Oil Company case, he felt he should point out that when it had been discussed in the Security Council, Sir Benegal Rau, who was later to become a judge in the International Court of Justice, had stated that it might not be "wise or proper" for the Council to take a decision while the case was still pending before the International Court [8] and had advised the Security Council against doing so. He had not dealt with the matter of competence. The Security Council, which was a particularly important organ of the United Nations, had accepted that argument by eight votes to one.

[8] See Official Records of the Security Council, Sixth Year, 561st meeting, para. 75.

41. Rejecting the conclusions which might be drawn from the Anglo-Iranian Oil Company case, the representative of Liberia had relied entirely on Article 10 of the Charter. As he (Mr. Louw) had already stated the year before, that argument was fallacious, since Article 10 expressly stipulated that it was applicable "except as provided in Article 12", and the latter Article was specifically relevant to the present case. Moreover, by invoking Article 10, the representative of Liberia took the attitude that the General Assembly was master of its own procedure. Although it was true that in a democracy, the parliament was free to deal with any question whatsoever, that power did not extend to matters pending before a court. At least, that was the case in South Africa, as well as in the United Kingdom. The Committee could not arrogate to itself a right which would conflict with a legal principle respected by "civilized nations". With reference to that point, he quoted article 38 of the Statute of the International Court of Justice and, in particular, paragraphs 1 c and d. In determining the rule of law, those factors unquestionably had to be taken into account.

42. Since the Anglo-Iranian Oil Company case did not satisfy the representative of Liberia, he would refer that representative to the case of the Electricity Company of Sofia and Bulgaria, quoted by Judge Lauterpacht, who had observed that in that case the Court had invoked the sub judice principle, which was "universally accepted by international tribunals".[9] The principle, therefore, did not apply exclusively to certain national courts, as had been contended in the Committee.

43. In view of the action brought before the International Court, there was a danger that a question of duality of jurisdiction might arise. On that point, he quoted a statement by Judge Spiropoulos to be found on page 39 of The British Year Book of International Law, 1958.[10] The recommendations of the Committee on South West Africa involved the application of sanctions and, in considering them, the Committee was playing the part of a court of law. The International Court might perhaps be influenced by the Committee's decision.

44. For those reasons, it was clear that the Committee's debate and any resolutions in which it might culminate were creating a very dangerous situation, which might have the effect of prejudicing the work of the International Court of Justice. It should be borne in mind that it was Liberia and Ethiopia, and not South Africa, which had started proceedings before the Court.

45. Mr. EASTMAN (Liberia) said that he was highly flattered that the Minister for Foreign Affairs of South Africa had taken him for an experienced lawyer on the strength of his statement. He had done no more than study the Charter. Nevertheless, the compliment proved the validity of his argument, which was that both aspects of the question, the legal and the political, could be dealt with concurrently.

46. Mr. BOEG (Denmark) said that, in view of the Philippine representative's almost humorous statement about draft resolution A/C.4/L.712, he felt it necessary to exercise his right of reply and to give the Committee the views of another member of the Committee on South West Africa. The situation was in any case too serious to lend itself to humour, since it was jeopardizing human lives.

47. The Philippine representative saw some confusion between what the United Kingdom representative called a "committee of three members" in operative paragraph 4 and "the special commission" referred to in operative paragraphs 7 and 8. He was surprised at the Philippine representative's failure to realize that the draft resolution included two entirely different proposals; the first was that, as indicated in operative paragraphs 2 and 3, a study should be undertaken by a special commission of five members, which was again referred to in operative paragraphs 7 and 8; and, secondly, that a committee of three members, referred to in operative paragraph 4, should conduct an inquiry in the Territory.

48. The Philippine representative was much concerned about the prestige of the Committee on South West Africa, as was evident from the amendment he had proposed to operative paragraph 1, and believed that the appointment of a commission of five members would be an insult to that Committee. The Philippine representative and he himself were both members of the Committee on South West Africa. He personally was primarily concerned about the fate of the population of the Territory. He would support the proposal to set up a special commission to undertake a study if the General Assembly thought that that was a constructive step. He had all the less reason to oppose that proposal, since the idea of a study had come from the Committee on South West Africa itself, which had suggested it in paragraph 162 of its report (A/4926). Although the Philippine representative was entitled to make reservations on the matter, he did not have the right to express open criticism of any one basing a draft resolution on a recommendation contained in a report which had been adopted unanimously. The Committee had not envisaged the appointment of a commission of five members, but, at the time the idea had been discussed in the Committee, he (Mr. Boeg) had thought it obvious that the study would be carried out by some other body than the Committee itself. If the Committee undertook to carry out the study itself, it might well be asked why it had not done so before, as its terms of reference had been sufficiently broad for the purpose.

49. The Philippine representative also seemed to fear that the three former Presidents of the General Assembly who would make up the committee of three members would be too old for the task to be entrusted to them. He did not see why that would necessarily be the case nor did he think that that was the most serious objection that might be made to the appointment of such a committee. There again, it was the interests of the population of the Territory that must be given precedence.

50. Mr. DIGGINES (United Kingdom) thanked the Philippine representative for his correction of a grammatical error in the third preambular paragraph of draft resolution A/C.4/L.712. The other amendments proposed by that representative perhaps went a little too far.

51. The representative of Liberia had made an interesting suggestion in connexion with operative paragraph 4 of the proposal, and he hoped that it would be submitted as a formal amendment, so that it could be given appropriate consideration.

9/ See Sir Hersch Lauterpacht, The Development of International Law by the International Court (London, Stevens and Sons, 1958), pp. 137-138.

10/ London, Oxford University Press, 1959.

52. He also pointed out that, as the United Kingdom representative had said at the 1227th meeting, his delegation would give careful study to any amendments which delegations might put forward to that draft resolution.

53. Mr. YOMEKPE (Ghana) said that draft resolution A/C.4/L.712 seemed to be the work of someone who, like Rip Van Winkle, had slept for twenty years and upon awakening was no longer in touch with current affairs. By way of encouragement, his delegation was prepared to vote for that draft resolution, provided that the United Kingdom representative accepted the amendments proposed by the Philippine representative.

54. He noted that the Minister for Foreign Affairs of South Africa had seemed to insinuate, in his last statement, that the representative of Liberia had had his statement written by somebody else. Such an accusation was out of place in a United Nations body and his delegation thought that the rules of courtesy to which the Chairman had referred at the 1228th meeting should be respected by everybody.

55. Moreover, the Minister for Foreign Affairs of South Africa had twice repeated that he had the support of the United Kingdom with regard to the sub judice principle, and had stated that the United Kingdom Parliament respected that principle. In that connexion, Mr. Yomekpe recalled that at the 1227th meeting he had quoted a statement that had been made on the subject in the House of Commons in December 1960 by the United Kingdom Minister of State for Commonwealth Relations, and he again quoted that statement. In the light of that statement he was surprised that the Minister for Foreign Affairs of South Africa should claim that his position was supported by the United Kingdom.

56. With respect to the dispute which seemed to be in progress between the representatives of Denmark and the Philippines, his delegation considered it deplorable that a report which had been adopted unanimously should be the subject of such discussion. In the event of disagreement, the minority was free to submit a separate report. That had not been done, and it was desirable to put an end to fruitless argument which detracted from the dignity of the Committee.

The meeting rose at 6 p.m.

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