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 MEETING**

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Chairman: Mr. ACHKAR Marof (Guinea).

Requests for hearings (continued)

REQUESTS CONCERNING TERRITORIES UNDER PORTUGUESE ADMINISTRATION (AGENDA ITEM 23) (A/C.4/600/ADD.3) (continued)

1. The CHAIRMAN invited the Committee to take a decision on the requests for hearings contained in document A/C.4/600/Add.3. If there were no objections, the requests would be granted.

It was so decided.

AGENDA ITEM 55

Question of South West Africa (continued):

- (a) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/5446/Rev.1, chap. IV; A/C.4/613);
- (b) Special educational and training programmes for South West Africa: report of the Secretary-General (A/5526 and Add.1)

GENERAL DEBATE (continued)

2. Mr. ENE (Romania) said that the situation in South West Africa demonstrated the various aspects of colonialism: ruthless exploitation, denial of fundamental human rights, racial discrimination at its worst, disregard for commitments entered into by the colonial Power, and a state of tension which endangered international peace and security. Its special position as a Non-Self-Governing Territory with an international status made South West Africa a testing ground for the efficiency of the United Nations.

3. The question of South West Africa was being discussed at the eighteenth session of the General Assembly in a new context, in that South Africa's attitude, which was compounded of the inhuman policies of apartheid, of disregard for United Nations resolutions and of designs to annex the Territory, had been condemned by the whole world and by international organizations. The South African Government's reaction had been to use force against everything alien to its policies. The African population had been deprived of all constitutional channels for expressing their protests and, as a result of repressive discriminatory legislation and ordinances, their movements and their very lives were subjected to the whims of the racist authorities. The rapid expansion of South Africa's all-white police and military forces, which had aroused the concern of the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa, posed particularly grave problems for the Africans living under the rule of the South African Government, including the people of South West Africa, and for the continent as a whole.

4. The strengthening of South Africa as the bulwark of colonialism in Africa must be a matter of the utmost concern to all seeking the speedy elimination of the last strongholds of colonialism. In that context, it was easy to see that the independence of South West Africa could have an enormous impact on the liberation of Southern Africa as a whole. South Africa, South West Africa, Angola, Mozambique and Southern Rhodesia formed an area in which foreign monopolies and white settlers had common interests. That community of interests lay at the basis of the political and military support extended by certain Western Powers and their local colonial authorities to the South African Government.

5. At crucial aspect of the question of South West Africa was that under Article 22 of the Covenant of the League of Nations and Article 76 of the United Nations Charter, the purpose of international trusteeship was defined as the promotion of the well-being and the advancement of the indigenous inhabitants of the Trust—formerly Mandated—Territories. Furthermore, both the Covenant and the Charter emphasized that the powers vested in an Administering Authority were exercised on behalf of and in agreement with the international organization responsible for conferring the mandate—or trusteeship—for the Territory in question.

6. In the light of history's verdict that colonialism constituted an obstacle in the way of the attainment of the objectives of the Mandates System and the Trusteeship System, it might well be asked whether anybody could claim that the people of South West Africa should continue under trusteeship, and whether the international community could allow a country with South Africa's record to continued to act on its behalf. The Romanian delegation's reply to those two

questions was an emphatic negative. With reference to the former, the principle of early independence for South West Africa had long since been proclaimed by the United Nations. With reference to the latter, South Africa's racial conception had been repeatedly condemned by the international community both in and outside the United Nations. As Ruth First, a South African journalist, had pointed out in her book entitled South West Africa, there were no relations between Whites and Africans in South West Africa outside the master-servant relationship and the Territory was subjected to South Africa's traditional policy of rigid race rule. As The Times of London had said in September 1960, only one verdict was possible, namely that a mandate had been stolen and that the thieves were vainly protesting their innocence.

7. South West Africa was an anachronism even among colonies. Under South Africa's administration its dependence had been intensified and its present status did not differ in the least from that of an annexed territory, illegally integrated with the metropolitan Power. It was noteworthy that in his statement before the 1236th plenary meeting of the General Assembly the South African representative had found it unnecessary even to mention the existence of any problem of South West Africa.

8. The United Nations could no longer cherish any illusions that the South African Government could be induced to co-operate. Indeed, throughout the sixteen years during which the question of South West Africa had been on the United Nations agenda, the South African Government had demonstrated its inability to listen to reason. The methods employed thus far by the United Nations in its relations with the South African Government over the question of South West Africa had met with complete failure and there were no grounds for hoping that a similar approach by the United Nations direct or through the International Court of Justice would yield any better results in the future.

9. South West Africa was a colony like any other and it was incumbent upon the United Nations to compel the South African Government to apply to it the Declaration on the granting of independence to colonial countries and peoples. Indeed, the only specific feature of the South West African situation was that United Nations responsibility was even greater towards that Territory than towards other colonial territories.

10. It was the duty of the United Nations to furnish further help to the people of South West Africa in their struggle for liberation and to provide for energetic action to compel the South African Government to give immediate effect to the General Assembly resolutions providing for the independence of South West Africa. The Romanian delegation supported the proposals by a number of African delegations that the Mandate entrusted to South Africa should be revoked and that foreign rule in South West Africa should be terminated. Such a measure would deprive the South African Government of any legal cover for its continued presence in a territory which did not belong to it. In line with its consistent anti-colonialist policy of support for the independence struggle waged by the peoples of the dependent territories, his delegation was ready to make its fullest contribution to the search for a solution which would bring about the speedy independence of South West Africa in the interests of the people of the Territory and of tranquillity in that part of the world.

11. Mr. COOMARASWAMY (Ceylon) said that the fact that the problem of South West Africa had not yet been solved was a blemish not on the record of the United Nations but on that of the Mandatory Power and on that of those Powers which in one way or another had encouraged South Africa to continue to defy the Organization. Unfortunately non-compliance with resolutions adopted by overwhelming majorities of the General Assembly was today the practice of many colonial countries, including some which were founder Members of the United Nations.

12. The idea that the possession of colonies constituted a sacred trust, first put into practical form in the Covenant of the League of Nations, had been advanced earlier by great liberal thinkers such as Edmund Burke, J.A. Hobson, President McKinley and President Theodore Roosevelt and had been upheld by the Supreme Court of the United States, which had ruled in 1901 in the *Neeley v. Henkel* case, that Cuba was a "territory held in trust for the inhabitants".^{1/} In 1918 General Smuts had proposed plans for a mandatory system and at the Peace Conference in 1919 President Wilson had succeeded in placing certain territories ceded by the defeated Central Powers under the Mandates System of the League of Nations, which had incorporated the idea of self-government in the form either of independence or of assimilation and had given practical recognition for the first time to the international accountability of the Mandatory Powers, the idea which underlay Chapters XI and XII of the United Nations Charter.

13. Article 22 of the League Covenant had been drawn up on the basis of two fundamental principles: the principle of non-annexation and the principle that the well-being and development of dependent peoples formed a sacred trust of civilization. The reference in paragraph 1 to the duty of developing the territories implied the temporary nature of the trust. Under paragraph 2 guardianship was to be exercised, not for the benefit of the Mandatory Powers but for the benefit of the peoples of the Territories and on behalf of the League. The responsibility of the Mandatory Power in administering a Territory was to be subject to certain international obligations imposed by the Covenant and by the Mandate. Territories under "C" Mandate, such as South West Africa, had been those which, for various reasons, could "be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population" (Art. 22, para. 6). One of the obligations of the Mandatory Powers had been to report annually to the League Council on the Territories committed to their charge. The reports had been received and examined by the Permanent Mandates Commission, which had advised the Council on all matters relating to the observance of the Mandates. The powers and rights conferred on South Africa had been clearly limited by the terms of the Mandate; no territory had been ceded or sovereignty transferred to the Mandatory Power.

14. The discussions at the San Francisco Conference on the subject of trusteeship had been based on a United States draft entitled "Arrangements for international trusteeship".^{2/} In that draft the sentence now forming

^{1/} See Cases Argued and Decided in the Supreme Court of the United States, October Term, 1900, in 179, 180, 181, 182 U.S., Book 45 (Rochester, New York, The Lawyers' Co-operative Publishing Company, 1901), p. 455.

^{2/} See Documents of the United Nations Conference on International Organization, vol. III, p. 607, document 2 G/26 (c).

Article 77, paragraph 2, of the Charter had not constituted a separate clause but had been placed with paragraph 1 c, dealing with Territories voluntarily placed under the Trusteeship System. In Committee II/4 the Egyptian delegation had proposed the deletion of the reference to "subsequent agreement", on the grounds that only the League of Nations could transfer the Mandates and that ex-enemy States could obviously not be parties to agreements placing their territories in trust. That amendment would have allowed the United Nations to decide which territories should be placed under trusteeship and would have made the System automatically applicable to all Mandates and detached enemy territories. Unfortunately the voice of Egypt had not been heeded and Articles 75, 77 and 78 had been adopted with only two dissentient voices. In retrospect it was clear that the blame for the present troubles of the United Nations in respect of South West Africa must be attributed to those Powers which had outvoted the Egyptian amendment.

15. His delegation submitted, however, that the framers of the Charter had failed to achieve their objective of restricting the applicability of the International Trusteeship System to voluntary agreements in respect of Mandated Territories. Article 77, paragraph 2, had been used subsequently by South Africa to support its argument that it was not bound to place South West Africa under the International Trusteeship System. That had also been the gist of the majority opinion of the International Court of Justice in 1950.^{3/} Nevertheless if paragraphs 1 and 2 of Article 77 were read together it was clear that Chapter XII of the Charter applied to three classes of territories, which were defined in paragraph 1, sub-paragraphs a, b and c. The words in paragraph 1 "as many be placed thereunder" could refer only to a unilateral act by the United Nations except in the case of the third class of territories, i.e., those voluntarily placed under the International Trusteeship System by States responsible for their administration. If those words called for bilateral agreement between the United Nations and the Mandatory Power they would be meaningless with regard to the second class—"territories which may be detached from enemy States as a result of the Second World War"—and there would have been no necessity to separate the first and the third classes or to have the word "voluntarily" in sub-paragraph c only. It therefore followed that the words "voluntarily placed" applied only to territories other than those referred to in sub-paragraphs a and b.

16. The words "by means of trusteeship agreements" in Article 77, paragraph 1, and the "subsequent agreement" referred to in paragraph 2 of the same Article could apply only to the contents of the agreements, for if they referred to the decision to place a territory under trusteeship as a bilateral agreement in all cases, with whom would the agreement be made in respect of the territories mentioned in paragraph 1 b? Under paragraph 1 a, a Mandatory need only agree regarding the terms of a trusteeship agreement. No bilateral agreement regarding the decision to place a territory under trusteeship was necessary under paragraphs 1 a and b of Article 77.

17. The second controversial Article was Article 80, paragraph 1, which had come to be known as the "conservatory clause". That clause had been based on a United States proposal, the object of which had been

to secure the observance of non-discriminatory open-door policies in international economic matters in all Mandated Territories and not only in Territories under "B" Mandate, as under the Mandates System. The French and United Kingdom delegations had disagreed with the proposal on the grounds that in the case of "B" Mandates the non-discriminatory policy had worked to the disadvantage of the indigenous peoples. The French delegation had argued that a general commitment to non-discriminatory policies would alter the terms of the "C" Mandates without the consent of the Mandatories. The United States delegation had reluctantly agreed to a qualification that equal treatment should be ensured in the Trust Territories insofar as it did not prejudice the advancement of the local inhabitants. The other point had been met by the addition of a new provision reserving all rights, including those of the Mandatory States, pending completion of trusteeship agreements, and the "conservatory clause" had been adopted. Five days later the USSR representative had proposed the complete deletion of the paragraph on the ground that it could be interpreted in such a way as to keep the existing Mandatories indefinitely in control. To meet that objection the United States delegation had suggested a new final sentence, which was now paragraph 2 of Article 80.

18. Article 80, paragraph 1, had subsequently been made use of by South Africa to support its claim that the trusteeship provisions of the Charter could not be held to alter the rights which it had enjoyed under the Mandate, including the right to administer South West Africa as an integral part of the Union of South Africa. That was a fallacious argument. Firstly, it overlooked the duty, under Article 80, paragraph 2 of placing the Territory under the International Trusteeship System without "delay or postponement". Secondly, it overlooked the duty, under Article 76 b, of promoting the political advancement of the inhabitants and their progressive development towards self-government or independence. Finally, it overlooked the fact that even a Mandate under the League Covenant had been in the nature of a sacred trust and that it had never been intended that South West Africa should be administered as an integral part of South Africa for all time.

19. The Mandatory Powers had been responsible to the League, which had been entitled before it went out of existence to divest them of their powers and rights as Mandatories and to transfer to the United Nations its own rights to, and powers over, the Mandated Territories. The question arose why the League had not taken those steps in order to strengthen the hand of the United Nations in the matter. The reasons were to be found in the resolution adopted by the Assembly of the League on 18 April 1946.^{4/} Firstly, in recognizing that Chapters XI, XII and XIII of the Charter embodied principles corresponding to those declared in Article 22 of the Covenant the League had clearly assumed that the United Nations would take its place in enforcing and applying principles similar to those of the Covenant in respect of the Territories under mandate. Secondly, the League had taken note of the expressed intentions of the Mandatory Powers regarding their administration of the Territories, but subject to three limitations: the administration was to be for the well-being and development of the peoples concerned; it was to continue to be in accordance with the obligations contained in the respective Mandates; it was to

^{3/} International status of South-West Africa, Advisory Opinion; I.C.J. Reports 1950, p. 128.

^{4/} See League of Nations, Official Journal, Special Supplement No. 194, pp. 278-279.

continue only until other arrangements had been agreed upon between the United Nations and the respective Mandatory Powers. As he had pointed out, under Articles 77 and 80 those arrangements could refer only to the terms of the new agreements and not to the question whether a new agreement was to be entered into. Thus the intention had been that the obligations under the Mandate were to remain in force, but only temporarily until other arrangements had been agreed upon with the United Nations. That implied an obligation to make such arrangements and to submit to the authority of the United Nations.

20. The expressed intentions of the Mandatory Powers had undoubtedly influenced the actions of the League. Thus the statement by the South African representative in the League Assembly on 9 April 1946 that the Union Government would regard the dissolution of the League as in no way diminishing its obligations under the Mandate, which it would continue to discharge until such time as other arrangements had been agreed upon concerning the future status of the Territory,^{5/} had induced the League not to revoke the Mandate at the time or to transfer it formally to the United Nations, South Africa was thereby estopped from refusing to make new arrangements with the United Nations or to accept its obligations under the Charter.

21. In 1946 South West Africans had first petitioned the United Nations against South Africa's plan to incorporate the Territory in the Union.^{6/} In the same year the South African representative had told the General Assembly that South West Africa was sparsely populated and unable to support itself and that the majority of its inhabitants desired its incorporation in the Union. He had also stated in the Fourth Committee (3rd meeting) that under the Charter the transfer from the Mandates System to the International Trusteeship System was not obligatory and that his Government was taking steps to ascertain the wishes of the peoples of South West Africa.

22. At the second part of the first session the Union of South Africa had presented to the Assembly a memorandum on the outcome of the consultation of the people of South West Africa.^{7/} The General Assembly had, however, declared in resolution 65 (I) that it was unable to accede to the proposed incorporation and recommended that the Territory be placed under the International Trusteeship System. In July 1947 the South African Government had informed the General Assembly that it had decided not to proceed with the incorporation of South West Africa but to maintain the status quo and to continue to administer the Territory in the spirit of the Mandate.^{8/} In resolution 141 (II) the General Assembly had reiterated its recommendation that South West Africa should be placed under the International Trusteeship System, and that recommendation had been repeated in resolution 227 (III). Representatives had pointed out during the debates that the Charter did not envisage the coexistence of the Mandates System and the International Trusteeship System and that a Mandated Territory should either be granted independence or be placed under trusteeship.

^{5/} *Ibid.*, p. 33.

^{6/} See *Official Records of the General Assembly, Second part of the first session, Fourth Committee, Part I, annex 16, part I, sect. (5); annex 16 a, part III; and annex 16 b.*

^{7/} *Ibid.*, annex 13.

^{8/} *Ibid.*, Second Session, Fourth Committee, annex 32.

23. In 1947 the South African Government had submitted a report on the Territory and the Union Parliament had declared that the Government should continue to render reports to the United Nations as it had done under the Mandate. But in 1949, the Union Government had informed the United Nations that it had decided not to transmit further reports.^{9/} In that same year the South West Africa Affairs Amendment Act had virtually annexed the Territory. In 1954 the administration of the African population had been transferred to the Union Department of Native Affairs. Since 1955 trade and economic statistics had been incorporated with those of South Africa, making it very difficult to determine the extent to which capital and other resources were being transferred.

24. At the 1457th meeting the Brazilian representative had stated that the General Assembly had adopted some sixty-five resolutions on the question of South West Africa. That astonishing fact served to underline the obstinacy of South Africa, which continued to treat the Assembly with scant respect. In those resolutions the General Assembly had, with increasing emphasis, called upon South Africa to fulfil its obligations under the Mandate, to recognize the authority of the United Nations in the matter and to place the Territory under trusteeship. All those resolutions had been disregarded by the South African Government, as had the advisory opinions of the International Court of Justice. The efforts of the *Ad Hoc* Committee on South West Africa set up in 1950, the Committee on South West Africa set up in 1953, the Good Offices Committee on South West Africa set up in 1957, and the Special Committee for South West Africa set up in 1961 to visit the Territory had also proved vain.

25. In 1960 the Governments of Ethiopia and Liberia, as former Members of the League of Nations, had instituted contentious proceedings before the International Court of Justice, which were still pending.

26. At the 1457th meeting the South African representative had stated that his delegation objected to the Committee's considering the question under the sub judice rule. He had further stated that the traditional standpoint of the South African Government on the question was that South Africa was not accountable to the United Nations in respect of South West Africa, since the League of Nations had not transferred its supervisory powers to the United Nations.

27. It was strange to see the importance attached to the sub judice rule by a country which had paid little heed to three advisory opinions by the International Court of Justice, which contested the Court's jurisdiction in the present case and whose Prime Minister had stated that his Government's decision to participate in the substantive proceedings should not be construed as implying a change in its attitude in regard to the South West African issue, namely that the International Court had no jurisdiction. In any event, the Fourth Committee was entitled to consider the question and to take decisions on the political issues involved without prejudging the legal issues before the Court.

28. The argument with regard to South Africa's so-called traditional standpoint of non-accountability to the United Nations in the absence of a transfer by the League was untenable, firstly because no formal transfer was necessary in view of the resolution adopted by the League Assembly on 18 April 1946,

^{9/} *Ibid.*, Fourth Session, Fourth Committee, Annex, document A/929.

and secondly because the Court's advisory opinion of 1950 had declared that the Mandate was still in force and that the United Nations had taken the place of the League for purposes of accountability. The judgement of 21 December 1962^{10/} also held that the Mandate was still in force. Thirdly, in the advisory opinion of 1955^{11/} Assembly's competence to exercise supervision over South West Africa in terms of Article 10 was recognized.

29. If it was true, as stated by the International Court in 1950, that South West Africa was a Territory under the Mandate assumed by the Union of South Africa in December 1920 and that the Union continued to have the international obligations stated in Article 22 of the Covenant, with the supervisory functions being exercised by the United Nations, then Chapter XII of the Charter had no application, since no trusteeship agreement had been entered into. South West Africa was a Non-Self-Governing Territory within the meaning of Article 73 of the Charter, which overrode Article 22 of the Covenant, and the Administering Member was therefore bound to carry out all the obligations laid down in Article 73 and all relevant General Assembly resolutions, including resolutions 1514 (XV) and 1541 (XV). The General Assembly had the same powers over South West Africa as it had over any other Non-Self-Governing Territory.

30. In the opinion of the delegation of Ceylon the main reason why the General Assembly had been unable to induce South Africa to comply with its resolutions was the co-operation and encouragement given to that country, for various reasons, by certain great Powers. The interlocking directorates of a number of commercial corporations told one aspect of the story. Western capitalist interests were deeply involved in South Africa, a fact which helped to explain the concern of the metropolitan Powers not to jeopardize so-called economic stability in the countries of Southern Africa, and their anxiety to ensure the perpetuation of the political *status quo*. That fact might explain the weak attitudes of some major Powers and the numerous abstentions on important resolutions. The United States representative had stated at the 1456th meeting that the export of arms to South Africa must continue until the end of 1963 owing to certain contractual obligations. He wondered whether in private international law such contracts could not be discharged on the ground of supervening impossibility if a State decided to act under operative paragraph 8 of General Assembly resolution 1805 (XVII).

31. The question which must be considered was how to find a solution to the problem. On the basis of past records it must be concluded that there had been a violation of the Mandate and of the sacred trust. He agreed with the Brazilian representative that action on the legal issues involved in the case before the Court should await a decision by the Court. That decision would be binding on the parties in view of article 7 of the Mandate. If South Africa defied the Court's ruling it would lay itself open to consequential action by the General Assembly under Articles 10 and 12 of the Charter and by the Security Council under Article 94, paragraph 2. After that decision the Assembly could hold that the Mandate had lapsed *ipso facto* by violation

of its terms, or could revoke it. He agreed with the Brazilian and Liberian representatives that it would be inopportune to revoke the Mandate while the Court proceedings were pending. That did not mean, however, that the General Assembly should stay its hand in all respects; it was entitled to look into the political aspects of the matter and to take action immediately, without waiting for the report of the Commission of Inquiry set up by the South African Government under the chairmanship of Mr. F. H. Odendaal.

32. General Assembly resolution 1805 (XVII) had been adopted in an effort to solve the problem. Unfortunately if had been impossible to implement operative paragraphs 5 and 6, owing to the non-co-operation of the Government of South Africa. As stated by the representative of Mali in the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, by the Reverend Markus Kooper and by the Special Committee itself, in its resolution of 10 May 1963 (A/5446/Rev.1, chap. IV, para. 213), steps must be taken for the immediate establishment of an effective United Nations presence in the Territory. Action could be taken also in terms of the other operative paragraphs of the Special Committee's resolution, including paragraphs 5 and 6 relating to Security Council action, and paragraph 7 concerning further efforts by the Secretary-General to implement resolution 1805 (XVII). Full use should be made of the Security Council and the Secretary-General to implement political decisions. Due attention should also be paid to document A/C.4/613, which was a letter from a number of petitioners suggesting the appointment of a planning and action committee for South West Africa. The delegation of Ceylon was particularly interested in the proposal for a survey of international corporations with a view to assessing their economic and political influence.

33. Mr. PINOCHET (Chile), supported by Mr. MONGONO (Nigeria), proposed that the full text of the Ceylonese representative's statement should be circulated as a Committee document.

It was so decided.^{12/}

34. Mr. CHIBA (Japan) said that the South African Government, despite universal condemnation and in total disregard of the repeated resolutions of the General Assembly, not only showed no sign of changing its policies in South West Africa but appeared to be intensifying its ruthless oppression of the people of that Territory. Over the past year, further steps had been taken to consolidate the system of apartheid in that unfortunate area. The South African Government's policies were morally wrong, legally indefensible and politically suicidal, and could only aggravate the already serious situation in South West Africa. South Africa's complete disregard of world opinion naturally gave rise to feelings of frustration. His delegation associated itself whole-heartedly with past General Assembly resolutions in condemning that country's refusal to co-operate with the United Nations.

35. When the question of South West Africa had been discussed by the Committee at the previous session, his delegation had stressed the importance of establishing an effective United Nations presence in South West Africa, and that idea had been incorporated in General Assembly resolution 1805 (XVII). The Japanese delegation continued to believe that such a

^{10/} *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 319.

^{11/} *South-West Africa—Voting procedure*, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955, p. 67.

^{12/} See A/C.4/615 and Corr.1.

measure would constitute a constructive and practical step forward and it was greatly disappointed that the idea had been rejected by the South African Government in its reply of 2 April 1963 to the Secretary-General regarding the matter (A/AC.109/37, sec. (b)). His delegation noted, however, that South Africa's rejection of the suggestion was not final. It earnestly hoped that the South African Government would reconsider its decision. It felt, too, that renewed efforts should be made in the Committee to explore all the possibilities in relation to the proposal.

36. There was general agreement that the situation in South West Africa was very dangerous; emotions were running high. It was to be hoped that South Africa would realize the gravity of its responsibilities before an explosion occurred which would mean disaster for Africa and for the world. At the same time, his delegation, while understanding the impatience of the South West African people, felt that the Committee should not allow itself to be swept away by its emotions. The case now before the International Court of Justice was undoubtedly one of the most important cases the Court had ever had to consider; its decision would be of great significance for the fate of South West Africa. The Committee should therefore avoid any action which would prejudice the Court's judgement. It should rather concentrate on measures directed toward establishing a United Nations presence in the Territory, as envisaged in resolution 1805 (XVII) and in the resolution adopted on 10 May 1963 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Meanwhile the United Nations had the right to expect the South African Government, for its part, to refrain from taking any measures which would aggravate the situation.

37. His delegation felt that the Committee should continue to seek practical measures upon which all members could agree. All were united in their detestation of the racial discrimination practised in South West Africa, in their support for the right of the people of South West Africa to self-determination, independence and human dignity, and in their opposition to any attempt to incorporate South West Africa into South Africa and its deplorable apartheid system. It was therefore to be hoped that the Committee would remain united in its efforts to find suitable measures to put an end to racial discrimination in South West Africa and to help the Territory to advance along the road to freedom.

38. Mr. SONN VOEUNSAI (Cambodia) said that the question of South West Africa was, first and foremost, a question of decolonization, the difficulties of which were further compounded by the fact that South Africa applied to the Territory its own policies of apartheid and had designs to annex the whole or part of it.

39. The Declaration on the granting of independence to colonial countries and peoples, with particular reference to operative paragraph 5, was fully applicable to South West Africa, and General Assembly resolutions 1702 (XVI) and 1805 (XVII) made express reference to the South West African people's right to self-determination and independence. The applicability of the Declaration was not invalidated by the fact that the question of the Mandate conferred upon South Africa by the international community, namely the League of Nations, the precursor of the United Nations, was pending before the International Court of Justice.

40. He regretted that, despite the Secretary-General's intervention, the provisions of operative paragraphs 5 and 7 of General Assembly resolution 1805 (XVII) had remained a dead letter.

41. Although South Africa was invoking the sub judice principle, it had always disregarded the International Court's earlier advisory opinions and, as could be seen from the statement made by the Prime Minister of South Africa on 21 January 1963, the fact that the South African Government had decided to participate in the proceedings on the substance of the matter should not be interpreted as implying a change in its opinion that the question of South West Africa was outside the competence of the International Court of Justice.

42. The question was aggravated by the application to the Territory of the inhuman policies of apartheid and of abhorrent racial discrimination. It was obvious that any steps taken by the States Members of the United Nations against those policies would be applicable to South West Africa. It followed that the question should be submitted to the Security Council, like that of apartheid in South Africa itself.

43. South Africa's designs over South West Africa were real. In the past they had been translated into plans for the partitioning of the Territory. The petitioners had given the Committee specific indications about present developments in the matter. Such designs were contrary to operative paragraph 6 of the Declaration on the granting of independence to colonial countries and peoples.

44. Operative paragraph 3 of the resolution adopted by the Special Committee on 10 May 1963 requested the General Assembly to declare that any attempt to annex the Territory of South West Africa by South Africa would be considered an act of aggression. In certain quarters it had been argued that the wording used had a strong juridical meaning and had been utilized but rarely. It was, however, the only appropriate term to apply to such a serious action as the annexation of territory by a foreign Government. His delegation felt that in the circumstances the Security Council had an additional reason for considering the question and for stating unequivocally what action it would take should South West Africa be annexed.

45. The Special Committee had also decided to draw the attention of the Security Council to the situation in South West Africa, the continuance of which was liable to constitute a threat to international peace and security. Although the gravity of the situation in the Territory had been questioned in certain quarters, his delegation felt that it would be wrong to wait for an armed uprising or a war of liberation before describing a situation as explosive. The African people of the Territory were struggling for racial equality and for their right to self-determination and independence. The alien Government in power was opposed to those lawful claims and was making ready to crush any uprising. In the struggle that would ensue all freedom-loving people would support the oppressed, and international peace and security would be jeopardized.

46. In view of the South African Government's persistent refusal to comply with United Nations resolutions, his delegation was of the opinion that all States Members of the United Nations should condemn South Africa's unlawful attitude, should give a clear account of the steps they intended to take separately or collectively, and should take the necessary holding action.

The question should be submitted to the Security Council without further delay, so that the latter could decide on the action to be taken in order to deal with the threats to international peace and security inherent in the continuation of the present situation.

47. Cambodia had no diplomatic relations with South Africa and had taken appropriate steps to ensure the implementation of resolution 1761 (XVII). It felt that it was essential that all Governments and peoples which regarded the principles of the Charter as sacred should adopt a firm and unambiguous attitude. His delegation was ready to support all proposals to that effect and was in favour of the immediate consideration of the question by the Security Council.

48. Mr. SZILAGYI (Hungary) drew attention to the statement in the report of the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa that the Republic's policies had become a constant provocation to peoples beyond South Africa's borders who felt an affinity with the oppressed people of South Africa, and to all opponents of racism everywhere (A/5497, para. 459). That statement furnished a good basis for the Committee's discussion of the question of South West Africa. The actions of the administering Power in South West Africa were merely a manifestation of the violent racist policies of the white settler Government of South Africa. Those policies were at variance with the United Nations Charter and against the interests of the overwhelming majority of the South West African population. Under the cloak of the so-called Mandates System, the South African Government extended its apartheid policies to South West Africa and assumed the right to shape the fate of the Territory in accordance with its own selfish aims.

49. There was no overlooking the fact that under the Mandates System, the Mandate had not only conferred rights upon the Mandatory Power but had given it certain serious duties. The League of Nations publication entitled The Mandates System^{13/} stated, on page 23, that the aim of the system was "to ensure the well-being and development of the peoples inhabiting the territories in question."

50. The world scene had changed radically in the past forty years and the great majority of former colonies had become independent States. South West Africa was still not among that number and the "sacred trust of civilisation" assumed by South Africa under Article 22 of the League Covenant still meant for the people of South West Africa the crushing burden of colonial exploitation. The South African Government had never intended to ensure the well-being and development of the South West African people; its aim had always been annexation of the Territory. That aim had become manifest immediately after the First World War. At the 1919 Peace Conference, the South African representative had demanded the annexation of the former German colonies and had opposed the proposal that they should be placed under the supervision of the League of Nations. South Africa's demand had not at that time been supported even by those great Powers which now, by providing economic and military aid, were to a great extent responsible for the fact that the South African government was able to apply its policies in South West Africa.

51. As was well known, South Africa had made repeated efforts since the Second World War to carry out its plan of annexation. In 1946, before the Assembly of the League of Nations, the South African representative had announced South Africa's intention to submit to the forthcoming session of the United Nations General Assembly its request for South West Africa to be recognized as an integral part of the Union of South Africa.^{14/} As the International Court of Justice had stated in its advisory opinion of 1950, South Africa had thus recognized the competence of the General Assembly in the matter. The General Assembly had refused to accede to South Africa's request. Since then the South African Government had refused to cooperate with the United Nations and had persistently opposed the Territory's accession to independence. It was now more determined than ever to annex the Territory, as had been confirmed by the recent statements made by petitioners before the Committee. There could be no doubt, however, that its endeavours were doomed to failure in an age when the forces of anti-colonialism were so strong.

52. The South African Government's attitude had deprived it of every legal and moral right to administer the Territory and it was a crime against the people of the Territory to allow it to continue to do so. South Africa's rule in the Territory was a serious threat not only to the South West African people but to the peace and security of all Africa. Recent resolutions of the General Assembly had declared that South Africa's policy towards South West Africa constituted a serious threat to international peace and security. Some delegations had objected to such strong language, but he would like to remind them of certain facts. The strongest armed forces on the African continent belonged to the white settler Government of South Africa, which kept 200,000 men under arms. As the New York Herald Tribune had stated on 3 August 1963, its navy was well trained and equipped with British-built frigates, its air force boasted French-built planes and rockets, and half a dozen factories now produced small arms in South Africa for home use. The London Daily Herald had recently drawn attention to South Africa's threats to the British-protected territories and its violations of international law. There was also the well-known case of Dr. Kenneth Abrahams, a coloured doctor who had been kidnapped in Bechuanaland by agents of the South African Government. Such examples showed that the representatives of the independent African States and of other countries were justified in claiming that South Africa's policies threatened the peace and security of Africa and of the world.

53. His delegation fully supported the resolution adopted by the Summit Conference of Independent African States reaffirming that South West Africa was an African territory under international mandate and that any attempt by the Republic of South Africa to annex it would be regarded as an act of aggression.

54. He welcomed the steps taken by many countries in severing relations with South Africa in pursuance of resolutions of the General Assembly and the Security Council. His country did not maintain any kind of relations with South Africa. Those States which were in the most favourable position for influencing the South African Government, however, had not taken any

^{13/} Series of League of Nations publications, VI.A.Mandates, 1945, VI.A.1.

^{14/} See League of Nations, Official Journal, Special Supplement 194, p. 32.

action of that kind; some, indeed, had substantially increased their trade with South Africa and their investments there. They had also continued to ship arms to South Africa. His delegation associated itself with the recent appeal made by the President of Tanganyika, Mr. Nyerere, to countries which claimed that their societies were based on principles of humanity to refrain from supporting the practice of apartheid.

55. His delegation recommended that the Committee should state in a resolution that by extending its policy of apartheid to South West Africa, the South African Government had repudiated its obligations towards the people of that Territory under the Mandates System. In addition, in view of the South African Government's designs to annex the Territory, the Committee should express the opinion that administrative powers should be transferred to the people of South West Africa without delay. If South Africa failed to act on that proposal, the General Assembly should, during the present session, adopt a resolution inviting all international agencies not to give economic and technical assistance to the South African Government, all Member States to forbid investment activities in South Africa, all Member States not to accord facilities to ships and aircraft bound for South Africa or coming from there and all Member States to prohibit their nationals from

emigrating to South Africa. The General Assembly and the Security Council should also seek ways and means of imposing an effective embargo, or if necessary a blockade, upon shipments of arms, military equipment and petroleum to South Africa, under the strict control of the United Nations. Those proposals had already been put forward by the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa and by petitioners.

56. South Africa had completely disregarded all the resolutions adopted by the United Nations bodies regarding South West Africa and the recommendations of the International Court of Justice. There was consequently no reason to believe that it would accept any future recommendations by the Court. On 21 January 1963 the South African Prime Minister had reaffirmed his Government's rejection of the Court's jurisdiction in the question of South West Africa. It was time for the United Nations to act, and for those Member States which, though professing to condemn the racial policies of the South African Government, maintained close military and economic ties with that Government, to fall in line with the overwhelming majority of Member States.

The meeting rose at 12.45 p.m.