



Wednesday, 22 March 1961,  
at 3.20 p.m.

Official Records

New York

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**Chairman: Mr. Adnan M. PACHACHI (Iraq).**

*In the absence of the Chairman, Mr. Ortiz de Rozas (Argentina), Vice-Chairman, took the chair.*

**AGENDA ITEM 43**

**Question of South West Africa (*continued*)**

PRELIMINARY REPORT OF THE COMMITTEE ON SOUTH WEST AFRICA ON THE IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 1568 (XV) (A/4705; A/C.4/L.675/REV.1) (*continued*)

1. Mr. JHA (India), on behalf of the sponsors of the twenty-three Power draft resolution, introduced the revised draft resolution (A/C.4/L.675/Rev.1), which incorporated several changes taking account of comments which had been made, particularly by the United States representative at the 1110th meeting. The sponsors had not, however, been able to accept that representative's suggestion that the words "constitutes a serious threat to international peace and security" in the last preambular paragraph should be replaced by some such expression as "if allowed to continue, is likely to endanger international peace and security", since any reduction in the force of the paragraph would be inappropriate in view of recent happenings. The suggestion that operative paragraph 1 should speak of "self-determination" rather than "independence" was likewise unacceptable. It had been clear from the statements of the petitioners that the people of South West Africa yearned for freedom and independence, and the paragraph in question merely recognized that fact. Moreover, the whole concept of the future of dependent peoples has changed during the last fifteen years and the present state of world thinking on the matter was reflected in the Declaration on the granting of independence and freedom" for the peoples of all territories Assembly resolution 1514 (XV). Operative paragraph 5 of that resolution made no distinction of the kind now suggested but called for steps towards "complete independence and freedom" for the peoples of all territories which had not yet attained independence.

2. With regard to operative paragraph 3 the sponsors had accepted the suggestion that it should be brought into line with the text of an earlier resolution and the revised text was based on the relevant paragraph of resolution 1593 (XV). The last phrase of paragraph 4 had been amended to refer to the people's "right of accession to national sovereignty and independence with the least delay".

3. In connexion with paragraph 5 it had been asked how the Committee on South West Africa could discharge its duties without the co-operation of the Union Government, and whether the use of force was implied. The explanation was that resolution 1568 (XV) had instructed the Committee on South West Africa to go to the Territory and it was clearly imperative, in view of the whole situation, that that task should be carried out. His delegation would like to see the Committee's tasks performed with the co-operation of the Union Government, but if that proved impossible it was incumbent on the Committee to carry out those tasks in any manner it could. The use of force, however was clearly not implied, for it would naturally be contrary to the Charter to call for force in such a resolution. There might, however, be other ways of pursuing the matter within the framework of the Charter without the co-operation of the Union Government and he would wish to leave that to the Committee on South West Africa. There was certainly no indication that co-operation would be forthcoming from the South African Government.

4. Operative paragraphs 7 and 8 had been reworded to meet the views of various delegations.

*Mr. Pachachi (Iraq) took the Chair.*

5. Mr. BINGHAM (United States of America) expressed his appreciation of the extent to which the sponsors had tried to take account of the points he had raised.

6. Mr. GRINBERG (Bulgaria) said that the draft resolution before the Committee was a follow-up of resolution 1568 (XV). The reason why his delegation had proposed an additional paragraph in that resolution requesting a preliminary report from the Committee on South West Africa was that such developments as had in fact occurred had been anticipated and that any period of inactivity on the part of the United Nations should be reduced to a minimum. The United Nations was in effect engaged in a race with the Union Government, which had been steadily moving towards the total assimilation of the Territory.

7. The United Nations should not delay in taking energetic and effective steps to produce a genuine solution. Fifteen years of frustration was surely sufficient to prove that there was no possibility of a compromise. The whole colonial system was crumbling and in resolution 1514 (XV) the General Assembly had adopted a Declaration which stated that immediate steps should be taken in all territories which had not yet attained independence, to transfer all powers to the peoples of those territories in order to enable them to enjoy complete independence and freedom. Furthermore, Chapters XI, XII and XIII of the Charter contained clear provisions regarding colonies. There could be no doubt that South West Africa was a colony covered both by the Charter and by resolution 1514 (XV), and that the

United Nations had the right and obligation to do everything possible to see that the terms of both were carried out. That being so, the question of the Mandate ceased to have any real importance and the best solution would be to take a decision on the lines proposed by the petitioners: namely, to entrust the functions of administration in the Territory to a commission of independent African States, appointed by the General Assembly, with a view to the Territory achieving independence in 1962.

8. Many delegations, however, did not seem prepared for such action, and preferred the course envisaged in the draft resolution. That draft resolution was certainly a step in the right direction; it spoke in forthright terms and paragraph 7 embodied a significant new feature in its reference to the Security Council. It was his delegation's view that the matter must come before the Security Council; that was the logical culmination of the efforts of the United Nations.

9. Since the petitioners appeared satisfied with the draft resolution, his delegation had originally decided to support it. The alterations which had now been introduced, however, would make it necessary to study the matter again. The most significant change proposed by the United States delegation, which would have denied the right of the South West African people to independence, had fortunately not been accepted by the sponsors. The terms of paragraph 5 of resolution 1514 (XV) were categorical; that Declaration had been adopted by an overwhelming majority and was therefore an important document even if the United States delegation had abstained from voting on it. Moreover, it was stated in the report of the Special Committee of Six on the Transmission of Information (A/4526) to which the United States delegation had subscribed, that there was "general recognition that independence is among the rightful aspirations of every nation" (para. 17), and that presumably applied to South West Africa. Resolution 1568 (XV) also recognized, in the last preambular paragraph, the Territory's right to independence and full national sovereignty. The first amendment proposed by the United States would therefore be a serious step backward. In any case, the various petitioners, whose right to represent South West Africa had not been challenged, had testified that the people of the Territory wanted independence.

10. His delegation had reservations on the change introduced into operative paragraph 4, putting in question the right of the South West African people to immediate independence. With regard to the alteration in paragraph 7, there could be no doubt that the situation constituted a serious threat to international peace and security, and he had been in agreement with the Burmese representative's suggestion to insert the word "serious" in that paragraph, to bring it into line with the last preambular paragraph. Resolution 1514 (XV) stated in its fourth preambular paragraph that the increasing conflicts resulting from the denial of freedom to dependent peoples constituted a serious threat to world peace; that surely applied with particular force to the case of South West Africa. Again, resolution 1568 (XV) had already stated that the present situation in South West Africa constituted "a serious threat to international peace and security". Many countries had already declared a boycott on South Africa and the President of Ghana had recently appealed for a general boycott of the country. It was scarcely logical to state in the last preambular paragraph that the situation constituted a serious threat to international peace and to

say in operative paragraphs 4 and 7 merely that the continuance of the situation was likely to endanger international peace.

11. His delegation would vote in the light of the considerations which he had stated.

12. Mr. ABIKUSNO (Indonesia) recalled that at the 1111th meeting, the Irish representative had asked whether the use of force or deception was envisaged in operative paragraph 5, addressing his question in particular to the delegations of Indonesia and the United Arab Republic as fellow members of the Committee on South West Africa. His delegation associated itself with the comments made by the Indian representative on that question. The representative of Ireland knew that that Committee was primarily a negotiating and investigating body. As such, it was clearly not entitled to use force and any task entrusted to it must be interpreted in the light of the Committee's essential character. The question of the use of force or deception had never been raised and he was surprised that the Irish representative should now have raised it. There was no reference, either implicit or explicit, to force in the draft resolution; indeed, it should be clear to all that a resolution calling for the use of force could be adopted only by the Security Council. The draft resolution drew the attention of the Security Council to the situation in respect of South West Africa but made no specific recommendations. He hoped that the Irish representative would refrain from invoking further debate on the matter and that in future he would address any further questions to all the sponsors.

13. Mr. KENNEDY (Ireland) thanked the representatives of Indonesia and India for the reply they had given to his question. It seemed to him that his reason for asking the question was quite clear. Paragraph 4 of resolution 1568 (XV) had asked the Committee on South West Africa to go to the Territory immediately, an instruction with which it had been unable to comply. Paragraph 5 of the draft resolution requested the Committee immediately to proceed to discharge the tasks entrusted to it; he had therefore inquired whether it was implied that, in the absence of co-operation from the Union Government, the Committee was to use force or deception. As the Polish representative had said at the 1111th meeting, the Committee's mandate was not stated with any precision in the present resolution, and the members of the Committee had the right to ask for such precision.

14. The Indian representative had said that there might be other means of performing the tasks envisaged without the co-operation of the Union Government. He would, however, appreciate some clearer guidance. In view of operative paragraph 6, he wondered whether the sponsors had in mind the possibility that the Committee might go to a neighbouring territory. If that was the case, he would like to draw attention to the views expressed by the petitioners on the subject; at the 1100th meeting, one of the petitioners Mr. Kuhangua had expressed the opinion that such a move would not be helpful and that the Committee should be either in South West Africa itself or in New York. The Committee should not embark on actions which would not be endorsed by the petitioners.

15. Mr. MELNICHUK (Ukrainian Soviet Socialist Republic) said that the Union Government's refusal to admit the Committee on South West Africa into the Territory testified to its fear of the Committee. The clumsy reference to the proceedings pending before the

International Court of Justice,<sup>1</sup> and the unwillingness of the South African representative in the Fourth Committee to give a clear-cut answer to the repeated inquiries whether his country would consider itself bound by the Court's decision, constituted new attempts by South Africa to evade responsibility for the crimes being committed in South West Africa, a Territory with an international status, in the furtherance of the Union's official policy of racist violence.

16. It could be said without exaggeration that the South African colonialists had turned South West Africa into a racist hell. The petitioners had informed the Committee of the unbearable conditions in which the indigenous inhabitants were forced to live; they had spoken of innocent men, women and children killed by soldiers, policemen and "European" civilians. The Committee had learned with horror how unarmed Africans had been murdered with dum-dum bullets. When Mr. Kerina, one of the petitioners (1098th meeting), had told the Fourth Committee that it should take action before the indigenous inhabitants themselves resorted to the use of dum-dum bullets, his had been a sober voice of warning. The United Nations should reply to South Africa's attitude of ignoring United Nations resolutions by taking the most resolute measures and showing wisdom and objectivity. After the many years of struggle and suffering experienced by the indigenous inhabitants of South West Africa and the rivers of blood shed by them, it would be blasphemous to cast doubts on the sacred ideal of freedom and independence for the enslaved and dependent peoples.

17. Although draft resolution A/C.4/L.675 in its original form had not fully satisfied his delegation, which would prefer the more decisive step of the annulment of the Mandate over South West Africa, it would have been able to support that text. It had not yet had the opportunity of studying the revised text and therefore reserved the right to intervene again in the debate. It felt that the Committee should be guided by the principles of the United Nations and should strive for South West Africa's liberation from the colonial yoke so that it could become an independent African State.

18. Mr. YOMEKPE (Ghana) observed that there seemed to be some difficulty with regard to the words "the exercise of national independence and sovereignty" in operative paragraph 1 of the draft resolution (A/C.4/L.675/Rev.1) and "accession to national independence" in operative paragraph 4. It was not, however, the first time that the word "independence" had appeared in a resolution; in particular it was to be found in operative paragraph 4 (b) of General Assembly resolution 1568 (XV).

19. South West Africa, like any other country, reserved the right to decide on the type of constitution by which it wished to be governed or on the form of association it wished to have with other independent countries. The door to such association would not be closed by the achievement of national independence. The people of South West Africa knew of the recent attainment of independence by Togo, Mali, Niger and other countries and of the progress towards independence of countries such as Tanganyika and Sierra Leone. Naturally their appetite for independence was whetted and the delegation of Ghana therefore considered the wording of operative paragraphs 1 and 4 to be appropriate and opportune. The words "national independence

and sovereignty" were dear to the hearts of the peoples of Africa and his delegation would regret any move to delete those words. The sponsors had made concessions in other respects in order to obtain as much support as possible and hoped that those delegations whose views they had endeavoured to meet would now be able to vote in favour of the draft resolution.

20. Mr. HOUAISS (Brazil) said that he wished first to refute the insinuations made by the Reverend Markus Kooper with regard to Mr. Vasco Leitao da Cuñha (1100th meeting), at present Under-Secretary for Foreign Relations of Brazil, who by reason of his professional integrity, his broad cultural background and his dedication to the cause of dependent peoples was above any doubt or suspicion. Mr. Leitao da Cuñha had been in South West Africa not secretly but openly, in a personal capacity, in compliance with the terms of the invitation extended to him by the Government of the Union of South Africa. Thus, he had had no reason to reveal publicly his impressions of South West Africa. The cause of the peoples of South West Africa was so sacred as to preclude any resort to tactics of suspicion such as those raised by the Reverend Kooper.

21. He had a number of comments to make with regard to draft resolution A/C.4/L.675/Rev.1.

22. Firstly, South West Africa would undoubtedly fulfil all the conditions which would entitle it to self-determination.

23. Secondly, self-determination should be achieved in accordance with the general direction given the issue by the United Nations and with or without the consent of the Mandatory Power.

24. Thirdly, self-determination should be understood to be synonymous with total independence and the establishment of a sovereign State free to govern itself. The Brazilian delegation agreed that the passages in the draft resolution referring to independence should be maintained.

25. Fourthly, the Brazilian delegation had no doubt about the obligations of the Mandatory Power as envisaged in the Charter. It was convinced that the Mandate received by His Britannic Majesty on behalf of the Union of South Africa represented a number of sacred obligations on the part of the Mandatory Power which could not be manipulated for the purposes of South Africa's interests. The *sub judice* rule could not relieve the South African Government of its obligations towards the United Nations. It could not be invoked with the same effect claimed by the Union of South Africa unless there was also a formal statement from the Mandatory Power that it would abide unreservedly by the decision of the International Court of Justice. In the interim, it was not only the right but the duty of the United Nations to regard the Territory of South West Africa as non-self-governing under the terms of the relevant Chapters of the Charter and to require that that Mandatory Power should provide the information, assistance and facilities given by any other Mandatory Power coming under the International Trusteeship System. Any legalistic or formalistic subterfuges which disregarded the sacred principles that the interests of the peoples of the Non-Self-Governing Territories were paramount, were without foundation and should be considered invalid. If the legalistic argument were to be carried to its logical conclusion, the Union of South Africa, by withdrawing from the Commonwealth, would of its own free will renounce its mandate. In reality, however,

<sup>1</sup>I.C.J., *South West Africa Case, Application instituting proceedings*, (1960, General list, No. 47).

the Union of South Africa sought to ignore the almost unanimous view of the United Nations. The delegation of Brazil would not be averse to the idea of a union between South West Africa and the Union of South Africa, provided the former were free to manifest a desire for such union and provided the United Nations presided over the manifestation of that desire in such a manner that there could be no doubt that it was the real and profound expression of the will of the majority of the people of South West Africa.

26. Fifthly, the Brazilian delegation recognized that many unsuccessful appeals had already been made to the Union Government to comply with international law and that the Union Government clearly did not intend to yield on the subject of the right of the peoples of South West Africa to govern their own destinies.

27. Sixthly, the Committee on South West Africa had been unable to visit the Territory, in accordance with General Assembly resolution 1568 (XV), because of the active and passive resistance of the Union Government. He wondered whether the draft resolution, by reiterating the decision that that visit should take place and by changing the original word "Invites" to "Requests" would enable the Committee on South West Africa to comply with the decision of the General Assembly, or whether it would merely provide the Union Government with a further opportunity to show its determination not to co-operate.

28. After hearing the statement made by the representative of India, the members of the Committee on South West Africa were now better able to interpret the draft resolution. The reply given by the representative of Ireland was, however, relevant to the comprehension of operative paragraph 5. The Brazilian delegation would like to have it clearly established what facilities the Committee on South West Africa would have to carry out its fact-finding mission. In that connexion he recalled that his country had never been unwilling to participate in fact-finding Commissions of the United Nations.

29. Seventhly, with reference to operative paragraph 7 of the draft resolution, his delegation could see no reason why the attention of the Security Council should not be called to the situation in South West Africa. The only result of that clause would be the convening of the Council to discuss the question after the resolution had been put to the test, in other words, after the Committee on South West Africa had visited the Territory, or the impossibility of such a visit had been ascertained, and after the Committee on South West Africa had reported to the sixteenth session of the General Assembly.

30. Lastly, his delegation supported the idea of deleting operative paragraph 8, since it considered that the facts mentioned therein, although of great importance and concern to world opinion, were not relevant to the main implications of the draft resolution.

31. His delegation accepted the revised draft resolution as it stood, subject to those reservations.

32. Mr. MAGHERU (Romania) said that the request to the Committee on South West Africa to make a preliminary report to the General Assembly on the implementation of resolution 1568 (XV) indicated the urgent nature of the question of South West Africa. After fifteen years of procrastination and attempts to avoid a solution, which was, however bound to come one day either from the United Nations or from the people of South West Africa themselves should the United Nations remain inactive, the Government of the

Union of South Africa had now seized upon the *sub judice* rule, thereby seeking to benefit from its own guilt, a manoeuvre that was not permissible in law. Meantime, it was treating South West Africa as a conquered territory whose *de facto* and *de jure* integration it sought to accomplish. Encouraged by fifteen years of inactivity on the part of the United Nations and by the support of certain States, the Union of South Africa was now conducting an aggressive policy and, passing from the defensive to the offensive, was dreaming dreams which were as unattainable and as harmful as those dreamt by Hitler. In that connexion he cited two facts: the sending of South African aviators to Katanga, and the strategic constructions undertaken in South West Africa by the Government of the Union of South Africa jointly with the Rhodesian Government, as described by the petitioners. The policy of the Government of the Union of South Africa, which was dictated by weakness and not by strength, was a threat to the cause of independence of colonial peoples and to international peace and security. His delegation believed that the threat inherent in the situation in South West Africa constituted the paramount consideration at the present stage, and that action or inactivity by the United Nations would have direct repercussions on peace and security in Africa and throughout the world. Past experience showed that the threat to peace grew as the attitude of the United Nations became more conciliatory.

33. His delegation was ready to support any draft resolution recognizing the yearning for independence of the people of South West Africa and requesting the proclamation of the immediate independence of the Territory. Reasonable proposals to that effect had in fact been put forward in the course of the debate. Although the original text of draft resolution A/C.4/L.675 did not go far enough, it had had certain merits and the Romanian delegation would have been ready to vote for it. He had not yet had an opportunity of studying the revised text introduced by the sponsors and reserved the right to speak again at a later stage.

34. The United States representative's suggestion that the reference to independence should be deleted from the draft resolution would constitute a retrograde step, particularly in the light of the Declaration on the granting of independence to colonial countries and peoples. He hoped that that suggestion was not a formal amendment and would not be pressed.

35. Any resolution, whatever its wording, would be regarded by the Union Government as a scrap of paper unless United Nations Members strove to make the Union of South Africa abide by its provisions. Certain delegations in the Fourth Committee had called for another appeal to the Union Government to revise its policies. The United States representative had said that no measures should be taken which were likely to compromise the decision of the International Court of Justice. He felt that the Union Government might derive encouragement from such appeals. It was important that the United Kingdom and other States entertaining close relations with the Union of South Africa should bring pressure to bear on the Union Government to comply with General Assembly resolutions.

36. The people of South West Africa would achieve independence in any case. His concern was that the United Nations should participate in that process in order to avoid the sacrifices that the people would otherwise have to make.

37. Mr. SKALLI (Morocco) said that all appeals to the sense of justice and the self-interest of the Union of South Africa and all the legal arguments used in the past fifteen years had been in vain. The situation in South West Africa had gone from bad to worse.

38. The Union Government was seeking to annex the Territory by right of inheritance—illegitimate, no doubt—from the League of Nations; the International Court of Justice would decide the validity of that claim. Resolution 1568 (XV) had given the Union Government one last chance to co-operate with the United Nations. In requesting the Committee on South West Africa to submit a preliminary report at the resumed fifteenth session, the General Assembly had shown its lack of faith in the co-operation of the Union Government. The Union Government had seized upon the *sub judice* argument to oppose the implementation of the resolution, although it was no doubt aware that the proceedings before the International Court of Justice had been brought by two African States as an additional means of defeating the Union Government's obstinate attitude.

39. The problem of South West Africa was not, however, merely legal: it could also be expressed in political and human terms. The African peoples were not prepared to give up any method likely to ensure the liberation of the people of South West Africa; indeed, they would be guilty of a dereliction of duty if they waited for the International Court of Justice to rule in the dispute and took no other action in the meantime. The representative of the Union of South Africa in the Fourth Committee had been asked by several representatives, including those of Mexico (1051st meeting) and the United States (1103rd meeting), whether his country would consider itself bound by the decision of the Court: his reply had been couched in such ambiguous language as to make it incomprehensible.

40. Draft resolution A/C.4/L.675/Rev.1 requested the Committee on South West Africa to proceed to discharge its tasks, if necessary without the co-operation of the Union Government. His delegation was convinced that the Committee would carry out the task entrusted to it objectively, without being swayed by any feelings of animosity. The United Nations should take whatever steps were necessary to ensure that the Committee could proceed to the Territory. The conscience of mankind had been stirred by the attitude of the Union Government; the countries of Africa and Asia had now been joined by those in Latin America and by the United States in seeking freedom and justice; voices denouncing the Union's blind policy in South West Africa could also be heard in Europe. The peoples of Africa would never abandon their brothers in South West Africa but would join them in their struggle. If the Union of South Africa continued to disregard the General Assembly resolutions, the sponsors of draft resolution A/C.4/L.675/Rev.1, and no doubt other States as well, would refer the matter to the Security Council at the sixteenth session of the General Assembly and might seek the revocation of the Mandate over the Territory.

41. By voting in favour of the draft resolution, delegations could show their attitude towards the question of South West Africa. He hoped that the draft resolution would be carried by an overwhelming majority and would be supported even by States which had abstained in the past.

42. Mr. ENAHORO (Nigeria) said that the draft resolution before the Committee did not ask for too

much, thus echoing the voices in the Fourth Committee which had counselled moderation. The sponsors, if left to themselves, would have asked for more, but they had appraised the situation in a realistic way and had chosen to compromise in an effort to secure the widest possible measure of support. They had done that, not from weakness, but because they believed in the principles of the United Nations and in democracy, and did not wish to take undue advantage of their numerical strength. Weakness in the draft resolution, on the other hand, would undermine the prestige of the United Nations—and that was a result that the delegations which set store by the United Nations were anxious to avoid at all costs.

43. The Union Government's refusal to place South West Africa under the Trusteeship System, regrettable though it certainly was, might not perhaps have created as much concern as was now felt over South West Africa had the Territory been administered according to the terms of the Mandate. In practice, however, the neo-nazi policy of *apartheid* pursued by the Union Government deprived the indigenous inhabitants of South West Africa of their basic rights and reduced them to the status of mere chattels. Such a policy could not be said to be in conformity with the Mandate and there was no reason why the United Nations should refrain from saying so.

44. The people of South West Africa were already becoming impatient with the seeming inability of the United Nations to influence the Union Government. If no effective action was taken soon, they would turn to other quarters for help. Such a situation was undesirable, but the possibility of its happening underlined the necessity for positive action by the United Nations.

45. It was difficult to understand why the Union Government had refused to permit the Committee on South West Africa to enter the Territory under the terms of resolution 1568 (XV); the tasks entrusted to it were certainly not beyond the provisions of the Mandate. While the League of Nations was still in existence, its Council had on several occasions dispatched fact-finding committees to mandated territories. Furthermore, the Mandate in respect of South West Africa did not specifically rule out fact-finding committees and it was a generally accepted principle that anything not formally prohibited by law was permissible.

46. On behalf of his delegation he could assure the United States representative that operative paragraphs 5 and 6 of the draft resolution did not imply or envisage the use of force. Operative paragraph 5 left it to the Committee to find peaceful ways and means of discharging its tasks. It might, for instance, think fit to conduct its inquiries from neighbouring territories, as had been done by the United Nations Commissioner in the case of Hungary. If that became necessary, he hoped that the Member States with territories adjoining South West Africa would not object to the Committee operating from there.

47. He saw no justification for the request by the United States representative that the last phrase in the first preambular paragraph should be deleted, since it was taken from operative paragraph 5 of General Assembly resolution 1514 (XV), which, having been adopted, had become part and parcel of the principles of the United Nations.

48. The United States representative had also thought that the reference to national independence in operative



paragraph 4 implied the complete separation of South West Africa from South Africa. While his delegation most emphatically did not envisage a future for South West Africa as a territory, annexed by South Africa, national independence did not necessarily imply complete severance of connexions with the Union. If the people of South West Africa wished to join South Africa, they could decide to do so of their own free will after attaining independence.

49. He could not accept the United States representative's implication that the situation in South West Africa did not constitute a serious threat to international peace and security at the present stage. The world in general and Africans in particular took objection to what was happening in South West Africa, where there was an explosive situation which certainly constituted a threat to international peace even if it was arguable that such a threat was not immediate.

50. He hoped that all the members of the Committee would support the draft resolution and that no one would try to invoke the *sub judice* principle, which had been discussed exhaustively. The United Nations was not a party to the case before the International Court of Justice and there was no reason why it should neglect its responsibilities in respect of South West Africa.

51. Mr. SMITHERS (United Kingdom) said that he, like the representative of Brazil, wished to refer to the allegations made by the Reverend Markus Kooper concerning the Good Offices Committee. From his own personal knowledge he could testify to the devoted work of Sir Charles Arden-Clarke had performed in Ghana. He felt sure the representative of Ghana would agree that Sir Charles was a great servant both of Ghana and his own country, with a distinguished record of service to the peoples of Africa.

52. Turning to the fourth preambular paragraph of the draft resolution, he said that the Statute of Westminster of 1931 had affirmed what had long been a fact of international life, namely that South Africa, like the other members of the Commonwealth, was a separate legal entity and that the sovereignty of the Crown in the South African Parliament was separate from the sovereignty of the Crown in the United Kingdom Parliament.

53. After the First World War the Principal Allied and Associated Powers, acting on behalf of the League of Nations, had transferred the administration of South West Africa to the Union Government. The Mandate executed by the League Council confirming and defining that transfer had used the formula normal for such purposes at the time by conferring it on and through the Head of State of South Africa. Since South Africa at that time had been a monarchy the Mandate would not have been conferred upon the South African Government without mention of its Head of State, the Crown.

54. As had rightly been pointed out that the Commonwealth was "the Commonwealth" and not "the British Commonwealth", but at the time of the Treaty of Versailles the Commonwealth had still been known as "the British Empire". The use of the words "His Britannic Majesty" had not therefore had any local significance or related in any way to the United Kingdom but had been the usual means of identifying the Crown in relation to the Government of South Africa. In that context it had not referred in any way to the Crown in relation to the United Kingdom Government.

It was natural that as the Head of State existed in the person of a monarch the idea should be current that the Crown had rights and duties in the international field which attached to the person of the Monarch, but that was simply not so. The Crown could exercise no functions in an international sense except upon the advice of the Ministers of one or another of the countries of the Commonwealth which acknowledged the Monarch as Head of State. Not only was the Crown incapable of so acting by itself, but it was also a well established doctrine that the Crown had a quite separate relationship with each such country and that Ministers in one country could not be substituted or act for those of another. The same individual acted as a separate monarch of each of the countries of the Commonwealth that recognized him or her as Head of State.

55. It was therefore clear that the conferment of the Mandate on the Crown "for and on behalf of the Government of the Union of South Africa" by implication and constitutional practice excluded any other set of Ministers from assuming rights or duties under the Mandate. It was equally clear that at no time had the United Kingdom possessed any rights or duties whatsoever in connexion with it. Some delegations had spoken as though the United Kingdom Government, or His Britannic Majesty, had conferred the Mandate on South Africa. That was a plain error of fact. At no time had the United Kingdom Government either possessed the Mandate or had power to confer it, and at no time had His Britannic Majesty had any connexion with the Mandate except as Head of State of the Government of the Union of South Africa or any power to exercise it through Ministers other than South African Ministers.

56. It was an accepted doctrine of international law that a change in the internal form of government of a State did not affect its external rights and obligations. When a King was deposed and a republican form of constitution set up, or vice versa, the new government fell heir to the rights and obligations of its predecessor. That was a well established principle; in fact, there were a number of countries represented on the Committee which would find themselves seriously embarrassed if that doctrine were not generally accepted. Had there been a king resident in South Africa who had been deposed and replaced by a President, nobody would have suggested that the South African Government had been divested of any of its external duties or rights.

57. The argument was sometimes advanced that when the Union of South Africa became a republic its Mandate would fall upon the United Kingdom or other Commonwealth Governments. Yet when India, Pakistan and Ghana had replaced the Crown by another Head of State, it had not been argued that all rights and duties incurred in that form reverted to the United Kingdom or to the remaining monarchies in the Commonwealth. That was a clear indication that such could not have been the intention behind the form of words used in the Mandate for South West Africa.

58. In view of those considerations the Committee might think that it would be useful to omit the last part of the fourth preambular paragraph, after the words "South West Africa". That change would not affect the sense of the resolution; indeed, the presence of the phrase in question could only serve to confuse an unwary reader, which could not have been the intention of the sponsors. Furthermore, the words used in that

paragraph had been taken from the preamble to the Mandate; the operative words were to be found in article 1 and read "a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa". It was an accepted rule of interpretation that words in an operative part of a document prevailed over words in a preamble. He hoped that in the interests of clarity the sponsors would agree to omit the phrase altogether, but if they were determined to quote the Mandate he suggested that the words should be taken from article 1.

59. The legal considerations by which the United Kingdom Government felt that it should be guided in the matter had been expressed by him recently in relation to a previous resolution (963rd plenary meeting) and he would not reiterate them. He would merely say that while the numerous facts cited by the Indian representative might well be correct, they were not necessarily relevant to the case of South West Africa. He would, however, make some comments upon the part which legal considerations ought to play in the Committee's debates if its efforts were to bear fruit. Representatives sometimes appeared to think that because a problem was a grave and tragic human problem it was somehow immoral and politically reprehensible to be circumscribed by the law and that emotion should be allowed to take charge. At the 1110th meeting the United States representative had submitted a number of admirable amendments, supported by arguments based on the text of the Charter and the Mandate and upon legal considerations, and he had been promptly taken to task by the representative of the Soviet Union.

60. It was very easy to call for immediate action, as many representatives had done and the petitioners too. It had always been the view of the United Kingdom delegation, however, that what was required was effective action which might lead to valuable results. That could certainly not be achieved by the United Nations except within the framework of the Charter and the Mandate. To call for action which fell outside the powers conferred on the United Nations by those documents was to assume that the United Nations was a sovereign parliament or a court of justice, which it was not. To attempt to arrogate to itself sovereign or judicial powers which it did not in fact possess would be to reduce the Organization to chaos and futility.

61. It was the view of the United Kingdom delegation that the terms of the Mandate should be strictly adhered to in all respects by all the parties. The British House of Commons itself had resolved without a dissenting vote that it wished Her Majesty's Government "to ensure that the Government of South Africa carries out the solemn obligations it undertook in accepting the Mandate for South West Africa, or surrenders it to the United Nations so that alternative trusteeship arrangements can be made". The Government, while pointing out that practical difficulties, had accepted that resolution.

62. The people and Government of the United Kingdom were opposed to *apartheid* or to racial discrimination wherever they were practised; they considered them to be reprehensible morally and calamitous politically. The equality of men before the law was a fundamental principle upon which the democracy of Britain rested. The United Kingdom did not believe that societies could thrive, or nations command the universal loyalty which gave them life, unless they

gave full recognition to that principle. There should be no doubt in the minds of the Committee on that point. The Government of the United Kingdom was opposed to the policy of *apartheid* wherever it might be found. The actions of the United Kingdom delegation in the matter in the Fourth Committee were all taken with that conviction firmly in mind, and with the intention of taking those steps which were most likely to benefit the inhabitants of the Territory.

63. The United Kingdom was frequently called upon to use its influence with the South African Government to persuade it to abandon its racial policies, and was sometimes reproached for not having done so. He submitted that by its policies in Africa and elsewhere the United Kingdom had done far more than any other Power to throw the practice of *apartheid* into isolation. He could not see by what right any delegation reproached a country whose Prime Minister had delivered in the South African Parliament itself a categorical rejection of the doctrine of *apartheid*.

64. The United Kingdom delegation had been criticized both in the General Assembly and in the United Kingdom Parliament for the series of abstaining votes it had cast in connexion with the question of South West Africa, which had been portrayed as a desire to defend the South African Government. He felt sure delegations must realise on reflection that the Government and the people of Britain viewed the practice of *apartheid* with revulsion and had no desire to defend it. His delegation had just received a report of a statement made by the Prime Minister in the House of Commons earlier in the day, in which he had described *apartheid* as "abhorrent to the ideals with which mankind is struggling in this century" and had said that the fundamental difference between the United Kingdom philosophy and that of South Africa was that the United Kingdom was trying to escape from those inhibiting prejudices. It had, however, been the experience of the United Kingdom, and indeed of mankind as a whole, that conflicts between nations were best regulated within the framework of the rule of law. For that reason his delegation had steadily declined to vote for resolutions which, though sometimes acceptable in substance, had been objectionable in law. If the United Nations itself did not abide by the terms of the Charter, how could it call upon others to do so? If it did not abide strictly by the terms of the Mandate, how could it compel the Mandatory Power to do so? For the United Nations to exceed the Mandate was to destroy the very basis of such powers as it possessed. The United Kingdom had consistently accepted and supported the 1950 Advisory Opinion of the International Court of Justice,<sup>2</sup> but if the United Nations sought to usurp the functions of the Court it could hardly expect its judgements to be implemented by others. There appeared to be a feeling among some delegations that when legal considerations appeared as obstacles in the way of immediate political desires they should be swept aside. That was in the last resort to exchange the rule of law for the rule of force and would spell the certain failure of the United Nations. To the beginning as to the end of such a process his delegation remained firmly opposed.

65. Mr. RASGOTRA (India) observed that, as his delegation had already pointed out during the first part

<sup>2</sup> *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).

of the session, the question of the position and prerogatives of His Britannic Majesty in the matter was at least debatable. The Committee had heard the views of the United Kingdom delegation on the subject; he would not express the views of the Indian delegation, at least for the time being.

66. With reference to the fourth preambular paragraph of the draft resolution, the sponsors might wish to consider whether the final phrase should be deleted in the light of the remarks made by the United Kingdom representative, but in case there should be any misunderstanding he wished to make it clear that the phrase in question had been taken from the second paragraph of the preamble of the Mandate.

67. Mr. ZULOAGA (Venezuela) asked the United Kingdom representative whether, if the fourth preambular paragraph were to quote the wording of article 1 of the Mandate, the United Kingdom delegation would vote in favour of the draft resolution.

68. Mr. SMITHERS (United Kingdom) said that he could give no such undertaking. The amendment he

had proposed had been put forward in the interests of clarity; its acceptance or otherwise would not affect the vote of his delegation.

69. Mr. OBEREMKO (Union of Soviet Socialist Republics) said there was no need to reply to the United Kingdom's representative's statement, since its aims were clear. The juridical reasoning he had advanced appeared to have nothing to do with the political question under discussion. Such legal quibbles could not distract the Committee's attention from the substance of the matter. The United Kingdom delegation was in a difficult position; if it condemned the policy of *apartheid* and the actions of the South African Government it must vote in favour of the draft resolution. If it condemned that policy in words but was encouraging it in fact, it would not, of course, support the draft resolution. The voting would show what was the real attitude of the United Kingdom delegation.

The meeting rose at 6.20 p.m.