

United Nations
**GENERAL
 ASSEMBLY**

FIFTEENTH SESSION

Official Records

**FOURTH COMMITTEE, 1075th
 MEETING**

Tuesday, 6 December 1960,
 at 10.55 a.m.



NEW YORK

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AGENDA ITEM 43

Question of South West Africa (continued):

(a) Report of the Committee on South West Africa (A/4464; A/C.4/L.652/Rev.1 and Add.1 and 2, A/C.4/L.653/Rev.2, A/C.4/L.654, L.655, L.658) (continued);

(b) Report on negotiations with the Government of the Union of South Africa in accordance with General Assembly resolution 1360 (XIV)

CONSIDERATION OF DRAFT RESOLUTION (A/4464, ANNEX I; A/C.4/L.652/REV.1 AND ADD.1 AND 2, A/C.4/L.653/REV.2, A/C.4/L.654, 655, 658) (continued)

1. The CHAIRMAN drew the Committee's attention to the fact that the sponsors of draft resolution A/C.4/L.653/Rev.1 and Add.1 and Corr.1, had submitted a new revised version (A/C.4/L.653/Rev.2) of their draft.

2. Mr. ABDEL WAHAB (United Arab Republic) said that the sole purpose of the draft resolution A/C.4 L.652/Rev.1 and Add.1 and 2, of which his delegation was a sponsor, was to record certain facts. The Committee on South West Africa had obviously concluded that the Union of South Africa had not complied with its obligations; it was equally clear that the Union had not co-operated with the various Committees established by the General Assembly to negotiate with it and that it had no intention of changing its position. The delegation of the United Arab Republic would therefore vote in favour of the draft resolution.

3. With regard to the revised draft resolution A/C.4/L.653/Rev.2, it should be borne in mind that the Committee on South West Africa, like the petitioners, had considered that the situation was growing worse. The General Assembly should therefore adopt without delay effective measures to protect the lives and interests of the inhabitants of the Territory. The presence in South West Africa of a United Nations body instructed to carry out an investigation on the spot and to hear the complaints of the inhabitants would undoubtedly help

to reduce tension. Moreover, the General Assembly, which was legally empowered to exercise supervisory functions over the administration of the Territory, had authorized the Committee on South West Africa to examine whatever information it might be able to obtain. Since the Union of South Africa had not transmitted any report on conditions in the Territory, the Committee on South West Africa had had recourse to various sources such as the Press and the statements of petitioners; there was therefore no reason why it should not also visit the Territory in order to examine the situation on the spot. The delegation of the United Arab Republic accordingly hoped that the Fourth Committee would approve the revised draft resolution (A/C.4/L.653/Rev.2) unanimously.

4. U TIN MAUNG (Burma) said that he would vote in favour of the draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2 because the objectives that Ethiopia and Liberia had set themselves in instituting proceedings before the International Court of Justice^{1/} were in line with the policy of the Burmese Government. The Burmese delegation would also vote in favour of the revised draft resolution A/C.4/L.653/Rev.2; the new wording was preferable to the original text, although Burma had been prepared to support any text condemning the Union Government. Some delegations had maintained that the petitioners had never requested that the Committee on South West Africa should go to the Territory. He would point out, however, that in reply to a question he himself had asked, Mr. Kerina had stated, at the 1055th meeting, that the presence in South West Africa of a team of observers would prevent the Government from perpetuating atrocities against the people. The terms of reference of the Committee on South West Africa could always be made more specific, or expanded if necessary. Similarly, if all the members of the Committee on South West Africa were not willing to go to the Territory, the Committee could appoint a sub-committee to go there and to submit a report to it. The main thing for the United Nations was not to lose time and to bring its moral authority to bear upon the Union Government. All the countries of the Commonwealth should also exert pressure on that Government with a view to putting an end to the deplorable situation prevailing in the Territory, which undermined the prestige of the United Nations.

5. The Burmese delegation would also vote in favour of all the other draft resolutions before the Committee.

6. Mr. ABIKUSNO (Indonesia) congratulated Ethiopia and Liberia on their initiative in instituting proceedings in the International Court of Justice in accordance with the Advisory Opinion of 11 July 1950. The Indonesian delegation would accordingly vote in favour of the draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2.

^{1/}I.C.J., *South West Africa Case, Application instituting proceedings* (1960, General list, No. 47).

7. As a member of the Committee on South West Africa, Indonesia had thought it better not to express an opinion on the revised draft resolution (A/C.4/L.653/Rev.2) lest it should be accused of prejudging the question, but after hearing the Irish representative state (1073rd meeting) that to send the Committee on South West Africa to the Territory would only aggravate the situation his delegation felt it necessary to make its position clear. In its opinion, the inhabitants of the Territory could not be deprived any longer of their right to the international protection which had been envisaged in the Covenant of the League of Nations and implicitly recognized by the International Court of Justice^{2/} by its advisory opinion of 1950 when it had acknowledged that the General Assembly should exercise supervisory functions. Nor should they be deprived of the right to give practical expression to their political aspirations. Those were two inseparable principles which must form the basis of any solution. No measure on the part of the United Nations would be sufficient to alter the situation if the people of the Territory were not in a position to say what they thought of that measure. For that reason, the United Nations, acting through the Committee on South West Africa, had always tried to obtain the co-operation of the Union Government; for the same reason, in spite of the repeated refusals of that Government, the Committee had not yet abandoned all hope of negotiating an agreement with it on the international status of the Territory.

8. From the setting up of the Committee on South West Africa by General Assembly resolution 749 A (VIII) in 1953 until the disappearance of the Good Offices Committee in 1959, the General Assembly had continually urged the Union Government to agree to negotiate with it and to send a representative to the Committee on South West Africa to provide it with such direct information as would enable it to propose appropriate measures for achieving the objectives of the Charter. As the South African Government had consistently refused to co-operate, the United Nations was entitled to decide to send the Committee on South West Africa to the Territory to obtain information. An observation of the situation at first hand, which would doubtless only confirm the conclusions at which that Committee had arrived on the basis of information obtained indirectly from various sources, would enable the United Nations to take more constructive steps towards a rapid solution of the problem.

9. He was surprised that it could be imagined that the sending of the Committee on South West Africa to the Territory would prejudice the mission which the Secretary-General was to undertake in the Union of South Africa. Not only was that argument unfounded but it was tantamount to denying the merits of resolution 1059 (XI) by which the General Assembly had requested the Secretary-General to explore ways and means of solving satisfactorily the whole problem of South West Africa. In reality, that step would assist the Secretary-General in his task and would afford him a further means of fulfilling the task entrusted to him in that resolution. Since the Secretary-General shared the concern of the United Nations, it was hard to see how the presence of the Committee on South West Africa in the Territory could run counter to a

mission to be performed by the Secretary-General in a neighbouring country.

10. The argument that the presence of the Committee in the Territory would aggravate the situation was even more surprising since it was the function of that body to facilitate the progress of the inhabitants towards independence. Was it to be thought that the presence of the United Nations always aggravated a situation rather than improved it?

11. The statement that the presence of the Committee in the Territory would imply the revocation of the Mandate was equally strange. The Mandate could only be revoked by an explicit withdrawal, either through a United Nations decision or following a declaration on the part of the Mandatory Power. The measure envisaged would actually add force to the Mandate.

12. The petitioners had requested the United Nations to intervene immediately in view of the gravity of the situation, and the Indonesian delegation did not see how the United Nations could intervene otherwise than through one of its bodies set up for that purpose; the Committee on South West Africa seemed clearly indicated, since for nearly ten years it had been exercising supervisory functions on behalf of the United Nations.

13. Any misgivings about sending the Committee to the Territory could only be due to a failure to understand the supervisory functions of the General Assembly or the principles of the Mandate. Such a misunderstanding could have the serious consequence of depriving the inhabitants of the Territory of the international protection which the International Court of Justice had implicitly allowed in its Advisory Opinion of 1950. His delegation could not accept such a position.

14. It supported the concept underlying the draft resolution; namely, that the General Assembly should take steps to enable the population to achieve internal self-government and later national independence. The Indonesian delegation would therefore vote in favour of that draft resolution and of all the amendments accepted by its sponsors.

15. Mr. KIANG (China) observed that, ever since the Committee on South West Africa had been set up, it had carefully studied the situation in the Territory with the aid of the official documents of the Union Government and of the territorial Administration, the statements of petitioners and the communications which they had sent to it. It was on the basis of the conclusions and recommendations of the Committee on South West Africa that the Fourth Committee could decide what were "the conditions for restoring a climate of peace and security" mentioned in operative paragraph 3 (a) of the revised draft resolution (A/C.4/L.653/Rev.2). The Chinese delegation, which had subscribed to all the conclusions of the Committee on South West Africa, saw no need to seek their confirmation or to undertake new inquiries; in any case, those conclusions would remain valid even if the Committee was unable to fulfil the mission with which the sponsors of the draft resolution wished to entrust it. Nor was it necessary for the Committee to go to the Territory in order to determine "the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government", since no one could question that the only means of ensuring self-government, followed by

^{2/}See *International Status of South-West Africa, Advisory Opinion, I.C.J. Reports, 1950, p. 128.*

independence for the Territory, was to place it under United Nations trusteeship, as several petitioners had requested, and to apply to it the provisions of Article 76 of the Charter.

16. The sponsors of the draft resolution apparently wished to make the Committee a kind of visiting mission. Yet the Charter expressly laid down, with regard to Trust Territories, that visiting missions must have the consent of the Administering Authorities. Moreover, the Irish representative had rightly pointed out (1073rd meeting) that the Committee on South West Africa had not been consulted. It might be asked what would happen if that Committee found itself unable to fulfil its mission. It was therefore in the interests of the Fourth Committee to ascertain the views of the members of the Committee on South West Africa.

17. It was not certain that that Committee's terms of reference could be extended in the way proposed in the draft resolution. The precise functions of the Committee were laid down in General Assembly resolution 749 (VIII). In its 1955 Advisory Opinion,^{3/} the International Court of Justice had stated that "the function of supervision exercised by the General Assembly generally takes the form of action based on the reports and observations of the Committee on South West Africa, whose functions are analogous to those exercised by the Permanent Mandates Commission". It was therefore important to reflect carefully before approving a proposal which would entrust the Committee on South West Africa with functions which were not analogous to those of the Permanent Mandates Commission.

18. Ethiopia and Liberia had requested the International Court of Justice to deliver judgement on twelve points related to questions examined by the Committee on South West Africa. It was to be hoped that the final judgement delivered by the Court would enable a Trusteeship Agreement to be drawn up for South West Africa. It would therefore be regrettable if the Fourth Committee, in taking a political decision, made it possible for certain pretexts which it would wish to avoid to be invoked. It would find itself in a very difficult position if, after adopting a resolution in which it took note of the proceedings instituted in the Court, it adopted another resolution running counter to the former one.

19. Finally, he agreed with the Irish representative that the United Nations must not renounce the Mandate, which was the best instrument for protecting the interests of the inhabitants of South West Africa. The fact that the Mandatory Power had not fulfilled its obligations under the Mandate did not mean that that Power should not place the Territory under Trusteeship. It was for that reason that the Chinese delegation had never considered that the Mandate had ceased to exist in consequence of the disappearance of the League of Nations. In that respect, the revised text of the draft resolution would have the same undesirable consequences as the original text; nor was it in keeping with the resolution adopted by the League of Nations on 18 April 1946.^{4/} In any case, the differences of opinion which had appeared in the Committee concerned, not questions of principle, but merely the

best means of serving the interests of the inhabitants of South West Africa.

20. Mr. ORBE (Ecuador) said that his country, which had always struggled against colonialism, would support the draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2, although in his view it would be preferable to amend operative paragraph 2 and to say, for example, that it had not been found possible to settle by negotiation the dispute which had arisen between several countries and the Union of South Africa.

21. Ecuador, which had already been prepared to vote in favour of draft resolution A/C.4/L.653/Rev.1 and Add.1 and Corr.1 and the amendments accepted by its sponsors, would vote in favour of the second revised text (A/C.4/L.653/Rev.2), which was still better. The argument that the question came under the sub judice rule—invoked in the first place by the representative of the Union of South Africa (1049th meeting) and taken up later by the Irish representative—was not valid, since the Committee had already come to a final decision on that point. Secondly, to send the Committee on South West Africa to the Territory in no way implied the revocation of the Mandate. Thirdly, the fact that the Union Government might put obstacles in the way of the Committee's mission or of that of the Secretary-General did not jeopardize the prestige of the United Nations, the Secretary-General or the Fourth Committee. In the fourth place, the Irish representative had not really replied to the specific question put to him by the Ceylonese representative (1073rd meeting), since the moral support which the Fourth Committee would give to Ethiopia and Liberia was not the only means of mitigating the gravity of the situation in South West Africa. Fifthly, it was not the United Nations which should be asked to proceed with moderation, for it had perhaps shown too much moderation over the last fifteen years, but rather the Union Government, which had violated the Mandate, the Charter and the Universal Declaration of Human Rights. Finally, Ecuador fully realized whose interests would be served if the Committee, before coming to a decision, waited for judgement to be delivered by the International Court; on that point his delegation would be guided by the view of the majority of delegations.

22. The Ecuadorian delegation would also vote in favour of the draft resolution submitted by Ghana and India (A/C.4/L.655) and the amendments (A/C.4/L.654) to the draft resolution appearing in Annex I of the report of the Committee on South West Africa (A/4464).

23. Mr. USHER (Ivory Coast) thought that the draft resolution (A/C.4/L.652/Rev.1 and Add.1 and 2), of which his country was a sponsor, should not give rise to any difficulties. It merely noted the proceedings brought before the International Court of Justice by Ethiopia and Liberia and commended those two States upon their initiative. If the United Nations contented itself with that resolution, however, it would be shirking its responsibilities with regard to the serious racial problem in South West Africa, since the crux of that problem, as the representative of Ireland and various other representatives had observed, was the Union Government's "apartheid" policy.

24. That was why certain delegations had deemed it necessary to submit draft resolution A/C.4/L.653/Rev.2. Two important points had been raised during the discussion on that draft. Firstly, the preamble

^{3/}See South-West Africa—Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports, 1955, p. 72.

^{4/}League of Nations, Official Journal, Special Supplement No. 194, resolution 4, p. 278.

expressed the concern of the sponsors over a situation which constituted a serious threat to international peace and security. His delegation had set forth the reasons for that concern in the course of the general debate. It did not think that the proceedings brought before the International Court could be adduced as a pretext for refraining from going into the matter more deeply. The Court had already confirmed that the Territory was still under the Mandate of the Union of South Africa and that the latter accordingly had international obligations to fulfil. The Union Government itself was invoking those proceedings as though it intended to respect the Court's decision, whereas everyone knew how little attention it had paid to the earlier advisory opinions. Similarly, the attempts to annex the Territory to the Union of South Africa gave rise to concern, for living conditions among the African inhabitants were such that there was reason to fear a revolt, which in the present circumstances would be not only a right but also a duty. It was likewise to be feared that the South West African problem might eventually take the form of a racist war in consequence of the charges of Communism made by the Union representative against the nationalist leaders. All those considerations justified quick action by the United Nations in order to safeguard international peace and security.

25. Secondly, the question whether the Committee on South West Africa should go to the Territory had been discussed at length. The sponsors of the draft resolution had been reproached for not consulting the members of the Committee on South West Africa in that connexion; yet Mr. Rodríguez Fabregat, the Chairman, had stated (1074th meeting) that he not only was willing to go but would feel honoured to be entrusted with such a mission, a statement for which the Ivory Coast delegation thanked him. It had also been said that that Committee's mission might increase tension in the Territory. If that was the case, it must be asked who would be likely to provoke any difficulties. It was unthinkable that the indigenous inhabitants should do so, for they could not but give an enthusiastic welcome to any United Nations delegation sent to investigate their situation. Hence, it was to be supposed that any difficulties which might arise would be provoked by the Union Government itself. The United Nations, however, should not take that as a pretext for doing nothing. It had also been said that the dispatch of the Committee to the Territory would be tantamount to the termination of the Mandate. Although his delegation was in favour of terminating the Mandate, it should be noted that none of the United Nations Visiting Missions had had the effect of terminating the Trusteeship System in any of the Trust Territories. It had further been said that if the Committee on South West Africa went to the Territory, it would be taking a grave risk. Yet when the peace of the world and the security of peoples were threatened, there were risks which it was worth taking, and his delegation wished to commend in advance all members of the Committee who would signify their willingness to carry out the mission if it was entrusted to them.

26. His delegation would accordingly vote in favour of the two important draft resolutions before the Fourth Committee. He would like to ask all the Governments which were friendly to the Union of South Africa to realize the seriousness of the problem and its implications for the relations of the Union Government with the rest of Africa. While it was true that certain al-

liances existed, there were also alliances to be established with Africa. Furthermore, some of the existing alliances were beginning to be weakened by the serious problem of South West Africa. The new Member States had observed that votes in the United Nations were often the result of bargains and coalitions of interests, but it was confident that those bargains and coalitions could not withstand the force of a people's will to liberty. He expressed the hope that the draft resolutions would be adopted by a majority of the anti-colonialist and anti-racist delegations in the Fourth Committee.

27. Mr. DIOUF (Senegal) said that the two problems dealt with in draft resolutions A/C.4/L.652/Rev.1 and Add.1 and 2 and A/C.4/L.653/Rev.2 were related, and that his delegation would give both drafts its full support. For Senegal, which was one of the sponsors of the first draft resolution, the legal aspects of the question were important and must not be overlooked, but the overriding consideration was the refusal of a Member State to carry out the resolutions of the General Assembly and its consequent disregard for the Charter, the most elementary principles of law and the interests of peoples for whose political progress and progress as human beings it was responsible. The Union of South Africa was carrying out a segregationist policy in South West Africa which the conscience of the world decried. There was no doubt that when the time came for action to oblige the Union of South Africa to return to the proper course, all nations would be united.

28. His delegation would support the revised draft resolution (A/C.4/L.653/Rev.2) because one of the most important principles of the United Nations was the right of self-determination, and that principle should be applied to South West Africa humanely; it should be applied not in a spirit of demagoguery but as a matter of realism. It could not be denied that the draft was realistic, for it contemplated a visit by the Committee on South West Africa, it requested the Secretary-General to provide for the execution of the resolution, and it envisaged self-government for the Territory before the attainment of independence. A realistic approach was also apparent in the general concern for the economic and social advancement of the Territory and in the action of the two States which had brought proceedings before the International Court of Justice. It had been maintained that nothing should be done pending the Court's decision. The Court, however, could do no more than state the law; in other words, it could only recall the obligations deriving from the Mandate and note that the Union of South Africa had failed to comply with them. If nothing more was accomplished than to bring about due compliance with the Mandate, that in itself would constitute progress, even though on a very limited scale. As, however, the ultimate goal was to guarantee to the people of South West Africa their right of self-determination, the United Nations, which had succeeded the League of Nations in all its capacities, was qualified to amend the existing law if it was not respected. The Irish delegation's concern for the principles of legality was unquestionably commendable, for it might well be asked what would happen if law no longer existed and any organ could at any time violate the principles of legality. There were nevertheless occasions when an attitude more in keeping with the circumstances was called for. The present situation was a case in point;

he therefore hoped that all civilized nations would vote in favour of the draft resolutions.

29. Mr. KESTLER (Guatemala) recalled that his delegation had stated (1058th meeting) in the general debate that it was prepared to support any measure which was in accord with the principles of the Charter and would contribute to the well-being of the people of South West Africa. The representatives of Uruguay, Venezuela and Tunisia had already set forth all the arguments in favour of the revised draft resolution (A/C.4/L.653/Rev.2), which would be supported by his delegation. He would, nevertheless, like to advert to two points raised by the opponents of the draft resolution. It had been asserted, firstly, that the adoption of the draft resolution might work to the detriment of the indigenous population of the Territory. The main reason, however, why Guatemala would support the draft resolution was that its adoption would enable the Committee on South West Africa to observe the situation on the spot, and, as laid down in operative paragraph 3, propose steps which would lead to the restoration of a climate of peace and security and to the establishment of internal self-government for South West Africa. The sub judice rule could not be invoked as a pretext for depriving the United Nations of the right to watch over the well-being of the African population. The question of the competence of the Committee on South West Africa had also been raised and the allegation made that its terms of reference did not authorize it to carry out the proposed mission. The obvious reply was that that Committee's terms of reference did not prohibit it from carrying out such a mission but, rather, guaranteed its freedom of action.

30. Draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2 related to the legal aspect of the problem. The delegation of Guatemala whole-heartedly endorsed it and would vote in its favour, since it corresponded to the stand taken by Guatemala in the Committee on South West Africa.

31. His delegation would also vote in favour of the amendment submitted by El Salvador and Tunisia (A/C.4/L.654) to the draft resolution in Annex I of the report of the Committee on South West Africa (A/4464).

32. Mr. SOLANO LOPEZ (Paraguay) recalled that at the 874th plenary meeting of the General Assembly the Minister for Foreign Affairs of Paraguay had appealed to Member States to make increasing use of the services of the International Court of Justice; his delegation would therefore vote in favour of draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2.

33. It would also vote for the revised draft resolution (A/C.4/L.653/Rev.2), from which the inconsistencies of the original version had been removed. It was understood that the inhabitants referred to in operative paragraph 1 were the indigenous inhabitants of South West Africa.

34. Mr. GUARDADO (El Salvador) explained why his delegation and that of Tunisia had submitted an amendment (A/C.4/L.654) to the draft resolution in annex I of the report of the Committee on South West Africa. While the draft resolution had deserved to be approved, it had been inadequate from the legal point of view since it had not called for any punishment of those responsible for the incidents which had taken place in the Windhoek "native" location in December 1959. The amendment proposed by El Salvador and Tunisia filled that gap.

35. Draft resolution A/C.4/L.652/Rev.1 and Add.1 and 2 summed up the situation created by the failure of the Union of South Africa to carry out its obligations under the Mandate. He agreed with the representative of Ceylon that the Union Government had betrayed the sacred trust which it had undertaken. He also associated himself with all the delegations which had congratulated the Ethiopian and Liberian Governments on their action. That was the most positive step which had so far been taken, and he hoped that the Court would shortly pronounce an unequivocal judgement. The Minister for External Affairs of the Union of South Africa would have contributed more to the welfare of the people of South West Africa by showing as much respect for the provisions of the Mandate and the opinions of the International Court as for the rules of law to which he had appealed. As far as operative paragraph 2 of the draft resolution was concerned, the Spanish text appeared too categorical, and he suggested a draft amendment which he read.

36. The revised draft resolution (A/C.4/L.653/Rev.2) was quite constructive. The wording could have been sterner if a certain consideration and respect for the Union of South Africa had not been advisable. The dispatch of the Committee on South West Africa was the most effective step that the United Nations could take under the terms of the Mandate. It was not, in any event, true to say that the sub judice rule could prevent the United Nations from going to the aid of a suffering people or that the application of humanitarian principles could be barred by the action of the law. El Salvador would in any case vote in favour of the draft resolution.

37. Mr. HOLLIST (Nigeria) observed that his delegation was one of the sponsors of draft resolutions A/C.4/L.652/Rev.1 and Add.1 and 2 and A/C.4/L.653/Rev.2.

38. Some delegations considered that the words "and cannot be settled" in operative paragraph 2 of the first of those draft resolutions were too categorical and might preclude any possibility of future negotiations. There had, however, been unanimous praise for the Ethiopian and Liberian Governments in having submitted the dispute to the International Court of Justice, and that action was proof that the dispute could not be settled by negotiation. Such a step was, moreover, an onerous one, and Governments could resort to it only if all possibilities of negotiation had been exhausted. Furthermore, the United Nations had for fourteen years been vainly endeavouring to negotiate with the Union Government, whose representative had reaffirmed its policy before the Fourth Committee at the beginning of the present debate. Thus it was evident that there could no longer be any question of negotiation. The phrase in question was also perfectly justified by the fact that according to the terms of the Mandate itself, disputes should be submitted to the International Court of Justice if they could not be settled by negotiation.

39. With regard to draft resolution A/C.4/L.653/Rev.1 and Add.1 and Corr.1 and in particular operative paragraph 3, the Irish representative had made some important reservations at the 1073rd meeting, which he had expressed with unmistakable sincerity. For example, he had said that the presence of the Committee on South West Africa in the Territory would only increase the existing tension, though he had given no definite reasons for that statement. On the con-

trary, the representative of Nigeria was convinced that tension would come to a head only if there was no United Nations presence in the Territory, and that the dispatch of that Committee to the Territory with a view to obtaining physical evidence could not fail to bring about an improvement in the situation.

40. The Irish representative had also expressed the view that to send a mission to the Territory would be tantamount to revoking the Mandate given to the Union of South Africa, and he had referred in that connexion to the two Advisory Opinions of the International Court of Justice. In fact, the Council of the League of Nations had on several occasions investigated the possibility of sending fact-finding committees to mandated territories; it followed that the dispatch of such missions would in no case have been contrary to the Mandate. The League Council had never expressed itself in favour of such missions, but only because it considered them inexpedient, not because they were illegal. As the representative of Guatemala had said, anything not formally prohibited by law was permissible; there was no provision in the Mandate which formally prohibited the dispatch of a mission to the Territory. The United States representative had already implied that he would be ready to support the appointment of a fact-finding commission to ascertain on the spot whether the statements made by the petitioners before the Fourth Committee were exaggerated or untrue, as the Union representative had claimed that they were. Accordingly, the Committee would not be going too far in taking the proposed step and he saw no reason why certain delegations found it difficult to agree to.

Mr. Ortiz de Rozas (Argentina), Vice-Chairman, took the Chair.

41. Mr. HUSAIN (Pakistan) observed that, in the matter at issue, world opinion was pitted against that of the Union of South Africa. Most delegations had accepted the fact that the situation in South West Africa—which was acknowledged to be a mandated territory—was extremely unsatisfactory and that a remedy should be found for it.

42. The United Nations should exercise the supervisory functions which the International Court of Justice, by 12 votes to 2, had found it to possess in its Advisory Opinion of 11 July 1950, which was quoted in the report of the Committee on South West Africa (A/4464, para. 86). Since the Union Government refused to transmit petitions from the inhabitants of the Territory and would only agree to transmit testimony which was favourable to itself, the United Nations was deprived of the possibility of obtaining information about the Territory and had to consider how it could continue to exercise its supervisory functions. The Irish representative, whose views differed from those of other delegations with regard to the means, though not with regard to the end itself, which was to ensure the progressive development of the Territory towards self-government and independence, was afraid that, by sending the Committee on South West Africa on a mission to the Territory, the General Assembly might increase the existing tension. To express such fears was tantamount to acknowledging the validity of the Union Government's claim that the situation in the Territory was a matter for South Africa alone and that tension would cease the moment the Mandate was considered to have lapsed. In his view, tension would cease only when the Territory was treated as a genuine mandated territory and when its inhabitants were

treated as human beings whose fundamental rights would be protected. The United Nations had a duty to exercise its supervisory functions in the Territory; the only way in which it could still do so was to dispatch the Committee on South West Africa there.

43. Although Liberia and Ethiopia should be commended for instituting proceedings in the International Court of Justice, that Court's judgements—which moreover would have to be awaited for an indefinite period of time—had nothing to do with common law judgements. As the representative of Mexico had said (1051st meeting), it was not even known whether the Union of South Africa would agree to appear before the Court, still less whether, having refused to accept two Advisory Opinions, it would pay any heed to a further judgement. Accordingly he saw no reason why the sub judice rule should prevent the Fourth Committee from taking action.

44. He was not sure whether the dispatch of the Committee on South West Africa to the Territory would in fact be prejudicial to the Mandate; but since on the one hand that argument carried weight with some delegations, and on the other hand it was essential to take definite action, he thought that the sponsors of draft resolution A/C.4/L.653/Rev.2 might perhaps consider replacing the Committee on South West Africa by a committee made up of the newly independent African States and certain Asian and Latin American countries. In his view, however, the Committee on South West Africa was fully competent to proceed to the Territory and his delegation would vote for the revised draft resolution.

45. Mr. GRINBERG (Bulgaria) said that he was submitting in the form of an amendment two comments which he had already made on the draft resolution appearing in Annex I of the report of the Committee on South West Africa (A/4464). In operative paragraph 2, the words "the fact that according to petitioners" should be replaced by the words "the fact, reported by petitioners", so that the reader would not be led to suppose that the Committee on South West Africa had not attached full credence to the petitioners' statements.

46. In operative paragraph 6, the words "and in a manner more compatible with the Mandate" should be deleted; they implied that the Union Government had, in a certain degree at least, acted in a manner compatible with the Mandate. The fact was that the Committee on South West Africa itself had made it quite evident, in paragraphs 148, 153 and 222 of its report for example, that the action taken by the Union was being carried out strictly within the "apartheid" policy imposed by the Mandatory Power, that the Committee considered them to be in complete disregard of human rights and dignity; and that they were therefore wholly incompatible with the Mandate. The Irish representative had considered that constant references to the Mandate should be made, and it would be noted that it was in fact referred to in other paragraphs of the same resolution. Consequently, the reference to it in paragraph 6 could be deleted, since it was liable to cause misunderstanding.

47. Mr. KANAKARATNE (Ceylon) inquired when the Committee would proceed to the election of members of the Committee on South West Africa.

48. The CHAIRMAN said that the Committee would deal with that matter later.

The meeting rose at 1.15 p.m.