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CONTENTS

Chairman: Prince WAN WAITHAYAKON (Thailand).

Question of South West Africa: advisory opinion of the International Court of Justice (*continued*)

[Item 35]*

1. Mr. DONGES (Union of South Africa) began by saying that, although greatest respect should be shown to the advisory opinion of the International Court of Justice (A/1362), it did not constitute a judgment binding on the parties concerned. Moreover, since the Court had issued its opinion, important new facts had arisen having a direct bearing on the argument and conclusions of the Court.

2. He made it clear that his delegation did not intend to make use of its position on the Committee by undue participation in the debate on a matter on which his government would later on have to define its position. It would only intervene when circumstances made it necessary.

3. He would listen with the greatest attention to the statements of the members of the Committee in order to report them to his government, which would consider most carefully any resolution adopted on the matter. The nature of the resolution would have an important influence on the decision of the Government of the Union of South Africa. The Union of South Africa did not wish to close the door to a friendly solution of a question which had been in dispute for so long, and it hoped that the United Nations would not do so either. At a time when the international atmosphere was particularly tense, it was essential to show the greatest political wisdom. In comparison with the grave events taking place, the question of South West Africa was almost academic. The time had come to build the foundations for agreement, not to seek points of disagreement.

4. Lord OGMORE (United Kingdom) felt that the general wish to reach a settlement must not lead to the hasty adoption of measures which might make a solution even more complicated. It would be most dangerous if the Committee were to try to go too quickly and thus provoke the breaking-off of negotiations. He hoped that all the members of the Committee were agreed that the only solid foundation for any solution was the advisory opinion of the International Court of Justice. The United Kingdom attached the greatest importance to the Court and attributed great weight to its declarations. The advisory opinion delivered by the Court after an exhaustive consideration of the problem should be the keystone of any action by the United Nations.

5. Representatives should take care not to accept only those parts of the advisory opinion of which they were in favour, and reject those which were not to their taste. Although the United Kingdom had perhaps certain reservations to make with regard to the juridical principles set forth by the Court, it would nevertheless accept the advisory opinion in its entirety, and urged that its provisions should be put into effect.

6. The advisory opinion might be summarized by saying that South West Africa should be administered as far as possible in accordance with the terms of the former League of Nations Mandate. The resolution to be adopted should reproduce the Court's opinion, state that the General Assembly subscribed to the provisions of the opinion and recommend that the Government of the Union of South Africa should conform to it.

7. With regard to the practical measures to be taken, he quoted a passage from the opinion (A/1362, p. 138)

* Indicates the item number on the General Assembly agenda.

which said: "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions."

8. Consequently, a system of supervision should be devised, through negotiations with the Government of the Union of South Africa, which would be as nearly as possible like that under the Mandate. That was a task which the Fourth Committee could not accomplish within the limits of a short resolution. The two draft resolutions contained in documents A/C.4/L.116/Rev.1 and A/C.4/L.121 recognized that that would be impossible and therefore entrusted to the special body for which they made provision the task of determining its own procedure. In both draft resolutions a question of principle was involved. The special structure of the United Nations imposed limitations on the application of the former mandates system. The combination of the two systems would involve a delicate adjustment. An absolutely new organ would have to be created, responsible to the United Nations, but composed not of government representatives but of individual experts. It was true that the two draft resolutions sought to establish such an organ, but they hardly defined the limits of the supervision to be exercised and the appropriate machinery, which was the essential part of the new procedure. To adopt those draft resolutions would be to ask the Government of the Union of South Africa to accept a shadow without substance, before even being certain that the procedure proposed was in accordance with that advocated in the advisory opinion of the Court.

9. In his view, the most that could be achieved during the current session was the establishment of a body composed of such distinguished persons as the President of the General Assembly, the Chairman of the Fourth Committee and the Chairman of the Interim Committee, who would be requested to enter into negotiations with the Government of the Union of South Africa over the question of how the terms of the advisory opinion were to be put into practice, and subsequently to prepare a plan which the General Assembly would be invited to adopt definitely at its following session.

10. The United Kingdom delegation wished to make it plain that there was no question of negotiations on the substance of the advisory opinion but only on the manner in which its provisions were to be put into effect. It was not a matter of discovering whether the Government of the Union of South Africa was to transmit annual reports and petitions, but rather of knowing how those annual reports and petitions were to be examined by the United Nations. The delay of ten months which would be involved by that method could not be regarded as serious, since the special body the setting up of which draft resolutions A/C.4/L.116/Rev.1 and A/C.4/L./121 proposed, must in any event devote a certain length of time to preparing its own rules of procedure. The only difference was that by adopting the method advocated by the United Kingdom, the statute of the body responsible for exercising supervisory functions on behalf of the United Nations would be prepared through consultation with the Government of the Union of South Africa, whereas by adopting the method proposed by the two draft resolutions in question, the statute of the organ would be prepared in an arbitrary way and would therefore be far less likely to be accepted by the Union of South Africa.

11. The United Kingdom was not willing to support any resolution which would either fall short of or go beyond the limits which he had just defined.

12. Mr. S. RAO (India) said his delegation was one of the co-sponsors of two draft resolutions (A/C.4/L.121 and A/C.4/L.122) that had been submitted to the Committee. The General Assembly, by its resolution 338 (IV) had asked the International Court of Justice to give an advisory opinion on the legal aspects of the question and had asked the Court one general question and three particular questions. The Court had given careful attention to the extremely difficult question of determining the rights and duties of the Union of South Africa towards the population of South West Africa and towards the international community as a whole. Accordingly, the advisory opinion should receive serious and respectful study by the General Assembly. Furthermore, the Secretary-General had done the United Nations a great service by transmitting complete documentation on the subject to the Court and by submitting a comprehensive preliminary statement to the Court.

13. In support of the two draft resolutions of which the Indian delegation was a co-sponsor, he quoted two principles which were restated in the advisory opinion of the Court (A/1362), the principle of non-annexation and the principle that the well-being and development of the population constituted a sacred trust of civilization. In 1919, no territory had been ceded and no sovereignty had been transferred to the Union of South Africa. The Government of the Union of South Africa had undertaken an international function of administering that territory on behalf of the League of Nations, with the object of promoting the well-being and development of the inhabitants. The international status of the territory had then been recognized by all the Members of the League of Nations, including the Union of South Africa. The Mandate had been created in the interest of the inhabitants of the territory and of humanity in general, as an international institution with an international object—a sacred trust of civilization.

14. In another passage in the advisory opinion (A/1362, p. 133) it was stated: "The authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified. These international obligations, assumed by the Union of South Africa, were of two kinds. One kind was directly related to the administration of the Territory, and corresponded to the sacred trust of civilization referred to in Article 22 of the Covenant. The other related to the machinery for implementation, and was closely linked to the supervision and control of the League."

15. According to the advisory opinion of the Court, the originators of the mandates system had considered

that the effective performance of the sacred trust of civilization by the Mandatory Powers required that the administration of mandated territories should be subject to international supervision. The Court stated (A/1362, p. 136): "The authors of the Charter had in mind the same necessity when they organized an International Trusteeship System. The necessity for supervision continues to exist despite the disappearance of the supervisory organ under the Mandates System. It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical, supervisory functions."

16. The sponsors of the two draft resolutions (A/C.4/L.121 and A/C.4/L.122) had adhered strictly not only to the conclusions of the advisory opinion, but also to the considerations that had led to those conclusions.

17. The two draft resolutions were based exclusively on the four questions which the General Assembly asked the Court in its resolution 338 (IV). Draft resolution A/C.4/L.121 was in strict conformity with the replies given to the first two questions.

18. Paragraph 1 of the operative part dealt with the international obligations assumed by the Union of South Africa. The list of those obligations was the same as that given on page 133 of the advisory opinion. The subsequent paragraphs dealt with the methods of control and supervision.

19. Paragraph 2 of the operative part, which was based on article 6 of the Mandate, referred to the transmission of reports on the administration of the territory. Paragraph 3 dealt with petitions, and paragraph 4 provided for the establishment of an *ad hoc* committee to examine the annual report and the petitions, and to take the place of the Permanent Mandates Commission of the League of Nations in that connexion. In paragraph 5, the General Assembly invited the Government of the Union of South Africa to designate a duly authorized representative who should be prepared to offer to the *ad hoc* committee any supplementary information that the committee might request.

20. Draft resolution A/C.4/L.121 therefore established a system of supervision which followed as closely as possible the supervisory functions exercised by the League of Nations over mandated territories, in accordance with the text of the advisory opinion. The only difference, which was inevitable, arose in connexion with the method of nomination of members of the *ad hoc* committee, who, instead of being nominated by the Council of the League of Nations, would be chosen from among ten Member States of the United Nations.

21. Paragraph 2 of the operative part spoke only of a report to be submitted in 1951 because—he wished to stress the point—in the opinion of his delegation, the régime suggested by draft resolution A/C.4/L.121 would not be of a permanent nature. In that connexion he quoted a passage which appeared on page 140 of the advisory opinion to the effect that "while Members of the League of Nations regarded the Mandates System as the best method for discharging the sacred trust of civilization provided for in Article 22 of the Covenant, the Members of the United Nations considered the International Trusteeship System to be the best method for discharging a similar mission".

22. It was for that reason that India, Indonesia and the Philippines had submitted a second draft resolution (A/C.4/L.122) in which the General Assembly recalled the conclusions reached by the International Court of Justice that the provisions of Chapter XII of the Charter were applicable to the Territory of South West Africa in the sense that they provided a means by which the territory might be brought under the Trusteeship System; that the provisions of Chapter XII of the Charter did not impose on the Union of South Africa a legal obligation to place the territory under the Trusteeship System; and that the Union of South Africa acting alone had not the competence to modify the international status of the Territory of South West Africa and that the competence to determine and modify the international status of the territory rested with the Union of South Africa acting with the consent of the United Nations.

23. The operative part of the draft resolution did not suggest that a trusteeship agreement should be drawn up before the following session of the General Assembly. He wished, however, in the name of the Indian Government, to explain that the establishment of an *ad hoc* committee instructed to examine petitions and annual reports was simply an interim measure pending the preparation of a trusteeship agreement.

24. His delegation regretted that it was unable to accept any proposal that a negotiating committee should be established, as suggested in the proposal submitted by Denmark, El Salvador, Iraq, Norway, Peru, Thailand and the United States of America (A/C.4/L.124), or any other similar proposal that might mean deferring a decision in that connexion until the following year.

25. He had listened with great sympathy to the representative of the Union of South Africa who had stated that his government did not wish to close the door to negotiations, and he asked the United Nations to show proof of a similar conciliatory attitude. He could not, however, agree that owing to the international crisis the question of South West Africa had been relegated to the background. The problems which had arisen in the Far East were certainly of the greatest importance for the peoples of that area and for humanity as a whole, but if the United Nations wished to act with firmness towards the violators of the Charter it should make sure that among the Powers which condemned those violations there was none whose conduct was equally open to criticism. The nations should of course unite, but only in order to ensure respect for the Charter in all parts of the world.

26. Mr. SUPOMO (Indonesia) stated that on three occasions—in 1947, 1948 and 1949—the General Assembly had recommended that South West Africa should be placed under the International Trusteeship System; in the course of those three years it had become ever clearer that the views of the South African Government were diverging more and more from those of the United Nations.

27. In 1946 the representative of the Union of South Africa had announced that his government intended to

hold a referendum in South West Africa on the nature of the political system desired by the people, and to inform the General Assembly of the results of that referendum.[1] During the second part of the first session, the Union of South Africa had stated that the majority of the population of South West Africa wished their territory to be incorporated in the Union of South Africa.[2] In resolution 65 (I), however, the General Assembly had opposed such incorporation and had invited the Government of the Union of South Africa to draw up a trusteeship agreement.

28. In July 1947 the South African Government had decided that it would maintain the *status quo,* would administer South West Africa "in the spirit of the existing Mandate" and would submit reports on its administration for the information of the United Nations.[3] At its second session the General Assembly had referred to the Trusteeship Council the first report submitted by the South African Government and had adopted resolution 141 (II) urging the Government of the Union of South Africa to propose a trusteeship agreement if possible before the third session of the General Assembly.

29. When the Trusteeship Council had considered that report at its second session (A/603, chapter VII), the South African Government had not sent a representative but had replied to the Council's questionnaire. The Council had noted that the indigenous population of South West Africa, comprising 90 per cent of the total population, did not have the right to vote and were not represented in the administrative organs of the territory. It had noted that the whole question of land tenure required reconsideration and that the educational and medical facilities for the use of the indigenous population were wholly inadequate.

30. At its third session the General Assembly had, in resolution 227 (III), reiterated its recommendation that South West Africa should be placed under the International Trusteeship System of the United Nations. At that time there had still been some possibility that a constructive agreement might be reached. In July 1949, however, it had become necessary for the Trusteeship Council to inform the General Assembly that it would be unable to continue examining the reports of the Government of the Union of South Africa, since the latter had informed the United Nations that the Union of South Africa had decided to discontinue supplying information on its administration of South West Africa. The Council had noted that, under the South West Africa Affairs Amendment Act of 1949, the Government of the Union of South Africa had already put into effect the provisions concerning a closer association between South West Africa and the Union (Trusteeship Council, resolution 111 (V)).

31. He pointed out that that Act (A/929, annex 1) provided for the division of the territory into electoral divisions which would elect members of the Assembly of South West Africa and of the Union Parliament. That arrangement was in practice tantamount to incorporation, as was recognized in section 44 of the Act itself, in which the Territory of South West Africa was referred to as "an integral portion of the Union". At the second session of the General Assembly,[4] Mr. Lawrence, the representative of the Union of South Africa, had informed the Fourth Committee that the South African Government did not intend to incorporate the territory, and that declaration had been reiterated in a communication from the South African Government.[5]

32. At the third session of the General Assembly, Mr. Louw, the South African representative, had no longer used the term "incorporation", but had replaced that word by the expression "another system of closer union".[6] Mr. Supomo did not feel that where the fundamental rights and political future of so many human beings were involved, recourse could be had to such verbal hair-splitting. In that regard he referred to the statement made in the Union Parliament by a member, Mr. Kahn, to the effect that the new Act amended the constitutional status of South West Africa or at least marked a change in the direction of naked incorporation of the territory in the Union of South Africa and, as such, was a flagrant violation of the principles of the United Nations and was a challenge to the Organization itself.[7]

33. The General Assembly had taken up the question of South West Africa at its fourth session and had adopted two resolutions, the first of which (337 (IV)) reiterated its previous resolutions and invited the Government of the Union of South Africa to comply with the decisions of the General Assembly and to resume the submission of reports on its administration of the Territory of South West Africa. In its second resolution (338 (IV)) the Assembly had requested the International Court of Justice for an advisory opinion on the international status of the Territory of South West Africa and the international obligations of the Union of South Africa arising therefrom.

34. Briefly recapitulating the principal findings of the International Court of Justice, he concluded that the legal aspects of the question were perfectly clear. He fully endorsed the opinion of the Court. Moreover, in reply to the question whether the Union of South Africa was bound to replace the Mandate which had been entrusted to it by the League of Nations by a trusteeship agreement concluded with the United Nations, his delegation agreed with the dissenting opinion of Mr. Alvarez (A/1362, p. 174-185) that that obligation existed in virtue of the spirit of the Charter and that at least a political international obligation and a moral obligation made it incumbent upon the Union of South Africa to conclude a trusteeship agreement.

35. It should be noted that the Mandate assigned by the League of Nations as a sacred trust of civilization must still be carried out in the spirit intended by the League of Nations, even though the latter no longer existed. The Mandated Territory could not on any pretext be reduced to the status of a colony or annexed by

[1] See *Official Records of the General Assembly, First part of the first session, Fourth Committee,* 3rd meeting.
[2] *Ibid., Second part of the first session, Fourth Committee, Part I,* annex 13.
[3] *Ibid., Second Session, Fourth Committee,* annex 3 a.
[4] *Ibid.,* 31st meeting.
[5] *Ibid.,* annex 3 a.
[6] *Ibid., Third Session, Part I, Fourth Committee,* 76th meeting.
[7] See *Union of South Africa, House of Assembly, Debates (Hansard), Second Session. Tenth Parliament,* 21st February to 25th February, 1949, p. 1623.

the Mandatory Power. No cession of territory or transfer of sovereignty was implied in the terms of the Mandate. Hence, the Union of South Africa was performing an international administrative function designed to promote the well-being and progress of the population. The Union of South Africa had certain rights, and administrative rights in particular, but it also had certain obligations, one of which was to agree to international supervision, to submit reports, and to transmit to the United Nations General Assembly, which had assumed the supervisory functions previously exercised by the League of Nations, petitions from the inhabitants of South West Africa which had previously been transmitted to the League of Nations.

36. His delegation felt that international supervision of the manner in which the Mandatory Power fulfilled its obligations was of vital importance, since the supervisory body, which in the case in question was the United Nations, could make suggestions and, if necessary, rescind the Mandate.

37. The Indonesian delegation had no doubt whatever that it was the duty of the United Nations to reaffirm the advisory opinion of the International Court of Justice. The Government of the Union of South Africa was clearly obliged to submit annual reports and to transmit to the United Nations the petitions submitted by the inhabitants of the territory. It was therefore appropriate that the General Assembly should establish a body to receive and examine those reports and petitions.

38. To that end the draft resolution contained in document A/C.4/L.121 provided for the establishment of an *ad hoc* committee on South West Africa, to consist of ten specially qualified persons selected by certain Member States. He felt that such a committee would enable all Member States to carry out in some measure their moral obligations towards the people of South West Africa.

39. To enable Member States to fulfil that obligation still more successfully, his delegation had also participated in the preparation of a second draft resolution (A/C.4/L.122), which stated that the General Assembly endorsed the conclusion of the International Court of Justice that the normal way of modifying the international status of South West Africa would be to place it under the Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter. It was to that end also that the authors of the draft resolution asked the General Assembly to request the *ad hoc* committee on South West Africa to submit to the following session of the General Assembly a report on the provisions and working of the South West Africa Affairs Amendment Act of 1949.

40. Mr. J. COOPER (United States of America) stated that his delegation had drawn up a draft resolution on the question of South West Africa (A/C.4/L.124) together with the delegations of Denmark, El Salvador, Iraq, Norway, Peru and Thailand. He recalled that so far hopes for a satisfactory solution of the question of South West Africa had been disappointed. However, a new element had now been added—the advisory opinion of the International Court of Justice. The United States felt that that advisory opinion would make it possible for the United Nations to arrive at a solution, and that all Members wanted the opinion of the Court to be made effective.

41. The question now was what decisions the Fourth Committee and the General Assembly should take in order to give effect to the opinion of the Court. The United States supported the opinion of the Court without reservation as it believed that international relations should be based on law and principles of justice. Yet subscription to large purposes, though necessary, was not sufficient in the case. The objective sought must be kept in mind. The Committee might adopt a resolution which, from the point of view of law, would be in complete conformity with the Court's opinion and prescribe certain conditions which would accord with the views of various delegations. Unless, however, the Committee adopted a practical method which would enable it to attain its objective, what the Committee did might be academic, a forensic exercise and perhaps a vain thing.

42. It was his sincere conviction that the resolution of which he was one of the authors constituted the best means of reaching a solution. He drew the Committee's attention to paragraphs 2 and 3 of the operative part of the joint draft resolution (A/C.4/L.124) which showed that the United States and the other sponsors of the resolution had based themselves wholly, without any reservation, express or implied, on the advisory opinion of the International Court of Justice. He recalled the main points of that opinion and said that if the divergencies of views on the advisory opinion, among the different delegations, were permitted to interfere with the settlement of the question, the solution would be made more difficult. In the United States view, the strongest position to be taken was to accept the full opinion of the Court. If, as recommended in the joint draft resolution (A/C.4/L.124), the General Assembly accepted the Court's opinion without any reservation, it would make it possible for effect to be given to that opinion. It would be for the General Assembly and the Union of South Africa to establish, on the basis of the Court's opinion, a reasonable and workable relationship in the spirit of the Mandate and the "sacred trust" which no one had actually ever questioned.

43. The United States delegation was aware of the fact that the Court's opinion by itself was not sufficient to safeguard the interests of the population of South West Africa. It was to be expected that lengthy debate might arise on a number of questions, particularly procedural ones. The General Assembly could of course incorporate in the resolution which it would adopt one of the many recommendations on measures necessary to give effect to the Court's opinion. It might follow, in that regard, the opinion of the Court itself, which stated, on page 138, that the degree of supervision to be exercised by the General Assembly should not exceed that which had been applied under the Mandates System. Nevertheless, the draft resolutions proposed on the question showed that the members of the Committee were of diverging opinions concerning the kind of organ to be established, its duties, composition, and similar questions.

44. The United States delegation, after thorough consideration of a certain number of possible solutions,

thought that it would be better not to undertake the solution of the problem at the present stage. The recommendations that the United Nations should examine petitions and annual reports could more appropriately be studied by a smaller body composed of specially qualified persons than by a Committee of the General Assembly. Moreover, the procedure for the consideration of petitions and reports would have to be established by agreement with the government concerned. It would be easier for a smaller group to institute the necessary negotiations with the South African Government, and to report thereon to the General Assembly.

45. He wished to make it clear that the establishment of such an organ would in no way mean that the negotiations would bear on the decisions of the Court. It would not imply a postponement of the decision whether there should be reports and petitions; and it would in no way prevent the Union of South Africa from carrying out its obligations regarding reports and petitions in conformity with the advisory opinion. It meant, in fact, that such documents, when received by the Secretary-General, would be examined in the manner determined by the General Assembly upon the recommendation of the small committee. That was the purpose of paragraph 4 of the operative part of the joint draft resolution (A/C.4/L.124).

46. The United States delegation deplored the fact that the question had not been settled sooner. Nevertheless, it wished to point out that the decisions and recommendations of the General Assembly were not always obeyed. There had been some very important decisions of the General Assembly involving the peace, security and well-being of the population of a large part of the world which had not been carried out by certain Member States of the United Nations.

47. Nevertheless, the General Assembly continued its work and endeavoured to have its decisions respected. The General Assembly was not called upon to take arbitrary decisions, but to proceed by means of consultation. The problem of South West Africa was nearer to solution than it had ever been, as there was now an authoritative and precise statement of the legal situation. The United States delegation therefore urged the Fourth Committee to go to the root of the problem and to agree on measures designed to give effect to the advisory opinion of the International Court of Justice.

48. The draft resolution sponsored by the United States and six other countries stated, in the strongest and clearest terms possible, that the General Assembly accepted the opinion of the Court in its entirety and that it wished to proceed in a spirit of mutual understanding and patience in the hope that the Union of South Africa, together with the other Member States of the United Nations, would accept the obligations imposed on it by the instrument which had made the administration of the Territory of South West Africa an international trust.

49. The United States delegation invited the other delegations which, like itself, were not basically opposed to the various draft resolutions presented to the Fourth Committee, to consider what resolution was most apt to serve the interests of the territory's inhabitants. Even at the risk of delay, the United Nations would better discharge its duty by a method that would ensure implementation of the Court's recommendations than by one that might jeopardize that result.

50. Mr. LANNUNG (Denmark) was glad that the International Court of Justice in its advisory opinion had made a clear and precise reply to the General Assembly's questions, which had been formulated with the active collaboration of the Danish delegation.

51. It was not his intention to dwell upon the background of the question. He would merely recall that the General Assembly had decided in resolution 338 (IV) to consult the International Court of Justice because it deemed it desirable, for its further consideration of the question, to obtain from the Court, which was, according to the Charter, the principal judicial organ of the United Nations, an authoritative opinion on the legal aspects of the problem. At the time, some delegations had expressed doubts concerning the timeliness of such a decision. At present, however, it was reasonable to suppose that the members of the Committee would agree in recognizing that in appealing to the International Court of Justice, the General Assembly had acted wisely.

52. Since the opinion handed down by the International Court of Justice was perfectly clear, no long commentaries were called for. The Danish delegation felt that the Assembly should endorse the Court's opinion and it would be the proper thing for all States, including the Union of South Africa with its high traditions, to greet that opinion with all the respect it deserved. It was to be hoped that the Union of South Africa would accept the opinion of the Court in general, and in particular would fulfil as soon as possible those explicit obligations which the Court had recognized, in unmistakable terms, as being incumbent upon the Government of the Union of South Africa in its capacity as Mandatory Power, namely, the obligation of submitting to the Organization reports on the administration of South West Africa and of transmitting petitions from the inhabitants of the territory.

53. In addition, the Danish delegation felt that the question of the machinery for giving effect to the Court's advisory opinion and the consequences implied with respect to a possible modification of the legislation affecting the status of the territory, might well be the subject of an exchange of views with the Government of the Union of South Africa.

54. It was those considerations which had led Denmark to join with the delegations of El Salvador, Iraq, Norway, Peru, the United States and Thailand in submitting the joint draft resolution (A/C.4/L.124).

55. The draft resolution had the merits of being concise and clear. Anxious to be equitable towards all the interested parties, the authors of the draft resolution had reproduced in full in the preamble the questions asked of the Court. According to the operative part of the draft resolution, the General Assembly was to accept the advisory opinion of the International Court of Justice with respect to South West Africa; urge the Government of the Union of South Africa to take the necessary steps to give effect of the opinion of the Court; and to establish a committee to confer with the

Union of South Africa concerning measures necessary to implement the advisory opinion of the International Court of Justice, and to report its findings and make its recommendations to the next regular session of the General Assembly.

56. The proposal thus threw the essence of the question into relief and left it to the future committee to settle the questions of detail.

57. He agreed with the representative of the United States that, in examining the various draft resolutions, the members of the Committee should ask themselves which one was likely to yield concrete and positive results. For his part, he was sure that the members would choose the joint draft resolution contained in document A/C.4/L.124.

58. Mr. RYCKMANS (Belgium) recalled that his delegation had always deplored the conflict which had existed for four years between the Government of the Union of South Africa and the General Assembly, over the Territory of South West Africa. At present, however, in view of the advisory opinion of the International Court of Justice, it was apparently possible to hope that a satisfactory solution to the question would be found. If, in the past, the Union of South Africa had been unable to accept the General Assembly's resolutions, it was because it had felt itself not legally bound, under the Charter, to submit to the Organization a trusteeship agreement for the territory in question. The International Court of Justice had recognized that the Union of South Africa was in the right on that point. It should therefore now be easier for that government to reach a satisfactory agreement with the United Nations.

59. In its advisory opinion, the Court indicated that the Union of South Africa continued to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa; and that, acting alone, it was not competent to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the territory rested with the Union of South Africa acting with the consent of the United Nations. That meant that the Union of South Africa could not make a unilateral decision to alter the international status of the territory. Similarly, the United Nations could not decide unilaterally to modify the obligations imposed on the Union of South Africa. However, that was precisely what some of the draft resolutions submitted to the Committee did, since they proposed that the Government of the Union of South Africa should transmit reports on the administration of South West Africa which would be examined by an organ whose functions and powers would be determined by the General Assembly alone, without prior consultation with the Union of South Africa (A/C.4/L.116/Rev.1 and A/C.4/L.121). The latter might point out that the United Nations was seeking to impose on it obligations to which it had not been subject under the mandates system of the League of Nations. At that time, in fact, the reports submitted by the Union of South Africa regarding South West Africa had been examined by the Permanent Mandates Commission, a technical and non-political organ, unlike the proposed *ad hoc* committee for South West Africa. In that connexion, it was reasonable to wonder what considerations had led the authors of those proposals to suggest the establishment of an organ composed of ten members, who would be elected by the Fourth Commitee, rather than by a method of election based, for instance, on the procedure adopted for the election of the members of the International Court of Justice.

60. For those reasons, the Belgian delegation intended to support the draft resolution submitted by the delegations of Denmark, El Salvador, Iraq, Norway, Peru, Thailand and the United States (A/C.4/L.124). Some members would perhaps say that the draft resolution did not go far enough, but at least it contained nothing that was unacceptable to any Member of the United Nations. The authors of the draft resolution included delegations which had always shown a keen devotion to the cause of indigenous inhabitants, a fact which should reassure the members of the Comittee.

61. It had been said—and it was the only objection raised against the joint draft resolution—that if the proposal was adopted, it would be a year before the question of South West Africa would be settled. It must not be forgotten, however, that the problem had existed for four years and that for the first time there was at last hope that it could be solved without impairing the dignity of the Union of South Africa and in conformity with the interests of the population of the territory. It was precisely for the sake of that population that he invited the members of the Committee to support joint draft resolution A/C.4/L.124. If the Fourth Committee adopted that draft resolution, and if, in one year, the proposed three-member committee succeeded in establishing, in consultation with the Union Government, a satisfactory agreement, the Fourth Committee could not but be pleased with its decision.

62. Mr. DE MARCHENA (Dominican Republic) said it was his delegation's intention to examine in great detail the question of South West Africa, to which it attached the greatest importance and which was legally most interesting. The Committee now had the advisory opinion of the International Court of Justice. It went without saying that the delegation of the Dominican Republic, which had accepted the principle of the binding character of the Court's decisions, unreservedly approved by the Court's opinion on the question of South West Africa.

63. However, for the time being his delegation would merely make a procedural proposal. In view of the number of draft resolutions submitted to the Committee and since as many as fifteen delegations had taken part in preparing those proposals, his delegation was afraid that the Committee would have some difficulty in reaching an agreement in plenary meeting.

64. True, the various proposals had certain salient features in common; for example, they all proposed that the General Assembly should accept the opinion of the International Court of Justice and recognize that the Union of South Africa was bound to administer South West Africa in accordance with the principles of the Mandate and that it should therefore submit reports on the territory and transmit petitions to the Organization. On the other hand, the proposals all differed in the matter of procedure. To replace the

former Permanent Mandates Commission of the League of Nations some proposals provided for an *ad hoc* committee for South West Africa to examine reports and petitions relating to the territory. By contrast, the proposal submitted by Denmark, El Salvador, Iraq, Norway, Peru, Thailand, and the United States (A/C.4/L.124) provided for the establishment of a committee of three members to confer with the Government of the Union of South Africa.

65. The Dominican delegation was therefore in favour of appointing a sub-committee to reconcile the various proposals and to establish a single text which could be discussed in plenary meeting. That committee should be composed of the fifteen delegations who had sponsored draft resolutions and the representative of the Union of South Africa. The delegation of the Dominican Republic submitted a formal proposal to that effect.

66. Mr. S. RAO (India) recalled that the United Kingdom representative had sharply criticized the draft resolutions submitted by India, Indonesia and the Philippines (A/C.4/L.121 and A/C.4/L.122) under which, he had said, the Union of South Africa would agree to render an account of its administration of South West Africa to a body without knowing the composition or the functions of that body or even whether it would be in conformity with the opinion of the International Court of Justice.

67. For his part, Mr. Rao wished to point out that, according to the United Kingdom suggestion, the committee which would confer with the Government of the Union of South Africa should commence negotiations with that government not on the substance of the advisory opinion of the International Court of Justice, but on the implementation of that opinion; it should negotiate not on the principle of the transmission of reports and petitions but the methods of applying that principle. At the beginning of the meeting, however, the Union of South Africa representative had said that his government did not recognize the advisory opinion of the International Court of Justice as binding, and although he had given assurances that his government would carefully consider any decision taken by the General Assembly, he had not said that his government was ready to accept the view of the International Court of Justice that the Union of South Africa had the obligation to submit reports and to transmit petitions relating to South West Africa. In the circumstances, it was difficult to see what could be achieved by the negotiations between the proposed committee and the Government of the Union of South Africa.

68. Furthermore, if the General Assembly decided, as India, Indonesia and the Philippines proposed, to establish an *ad hoc* committee for South West Africa, that committee could settle its rules of procedure and its methods of work in a few weeks. There should be no difficulty in that respect if agreement was achieved on the question of principle. There would be no objection to the committee's meeting in July 1951, as the delegations of Brazil, Cuba, Mexico, Syria and Uruguay suggested (A/C.4/L.116/Rev.1) and in that way, reports and petitions relating to South West Africa could be examined without delay.

69. He pointed out that the Trusteeship Council had adopted its own rules of procedure without the intervention of the General Assembly. There was no reason why the *ad hoc* committee for South West Africa should not do the same.

70. It was precisely because the population of South West Africa had been deprived of their lawful rights, and in particular the right of petition, for four years that it was advisable to set up an *ad hoc* committee for that territory without delay.

71. Mr. PEREZ CISNEROS (Cuba) said he had listened with some concern to the Dominican representative's proposal that a sub-committee should be established to attempt to prepare a single text on the basis of the different proposals submitted to the Fourth Committee.

72. The Cuban delegation's misgivings were due in part to the fact that the Dominican representative had not clearly indicated what he proposed the sub-committee's terms of reference should be; and in part to the fact that, when the Fourth Committee had established Sub-Committee 8 to reconcile the various proposals submitted on the report of the Trusteeship Council, the results had not been successful.

73. Another objection was that a body composed of the fifteen delegations which had sponsored the various draft resolutions would not be very well balanced.

74. To sum up, he was opposed to the establishment of a sub-committee of the type proposed. If the Fourth Committee decided to adopt the Dominican representative's suggestion, the Cuban delegation did not intend to participate in the proceedings of such a body for it preferred to defend its own proposals in plenary meetings of the Committee.

75. Mr. DE MARCHENA (Dominican Republic) explained that his delegation had proposed that a sub-committee should be set up to save the Fourth Committee the time-consuming task of selecting the common ground in the different draft resolutions.

76. The Cuban representative had raised the question of the proposed sub-committee's terms of reference. That body should prepare a text which, like all the proposals submitted to the Fourth Committee, proposed first of all that the General Assembly should accept the advisory opinion of the International Court of Justice.

77. Although the various proposals agreed on that point, as he had indicated earlier, they differed on the methods for giving effect to the advisory opinion. If the Committee did not succeed in reconciling those differences, the final decision might be taken by only a small majority, with many delegations abstaining. That would mean weakening the effect of the advisory opinion of the International Court of Justice, which, it should be stressed again, must guide the General Assembly in the matter.

78. Those were the reasons behind his delegation's proposal, the object of which was to put a single text before the Fourth Committee so that the latter might reach a decision supported by most members.

79. Mr. S. RAO (India) said he could not support the Dominican delegation's proposal, which he did not think was very practical in view of the short time in which the Committee must finish its work.

80. He thought, however, that the Secretariat should analyse the various draft resolutions and prepare a document which would bring out the features they had in common and the points of difference.

81. Mr. J. COOPER (United States of America) approved the motives underlying the Dominican proposal, which would be of great value if the proposed drafting committee were viable and could obtain useful results. Unfortunately, that did not seem to be the case, chiefly owing to the opposition of some of the delegations concerned. In the circumstances he suggested that the representative of the Dominican Republic should withdraw his proposal.

82. Mr. DE MARCHENA (Dominican Republic) withdrew his proposal for the moment, but said he might reintroduce it should it later appear to be useful. He supported the suggestion of the representative of India, who had asked the Secretariat to prepare a working paper summarizing the various proposals and stressing their common features as well as their points of difference.

83. Mr. QUESADA ZAPIOLA (Argentina), speaking on a point of order, said the Committee was to hold a morning and afternoon meeting the following day at the same time as the plenary meeting of the General Assembly. The agenda of the plenary meeting included two items which had been submitted to it by the Fourth Committee, including the report of the Trusteeship Council on the Territory of Somaliland. Delegations with only one representative on the Fourth Committee would therefore be in a difficult position.

84. The CHAIRMAN said the plenary meeting would not deal with the items of interest to the Fourth Committee while the latter was in session. The members of the Committee would be notified when the plenary meeting dealt with those items.

85. Mr. GARREAU (France) said that although the various proposals showed complete agreement regarding the principle of accepting the advisory opinion of the Court, they differed widely with regard to the manner in which that opinion was to be applied. The question at issue was how to apply the advisory opinion when there was no longer any organ based on the mandates system. A new organ would therefore have to be set up. Nothing was yet known, however, regarding the membership, terms of reference or rules of procedure of that new organ. Yet it was natural that the Government of the Union of South Africa should wish to know how the General Assembly intended to apply any resolution it adopted on the matter. The United Nations must come to an understanding with the Union of South Africa on that point.

86. Two of the resolutions submitted (A/C.4/116/Rev.1 and A/C.4/121) prejudged that understanding and proposed the adoption of measures of implementation without consultation with the government concerned. If the South African Government was requested to send a report and to communicate petitions without even knowing how the reports and petitions would be dealt with, it would be placed in a much more disadvantageous position than that of the governments which had accepted mandates from the League of Nations, as the League of Nations had begun by first establishing the procedure for the application of the mandates system.

87. The seven-Power proposal (A/C.4/L.124) for the establishment of a small committee to confer with the Union of South Africa concerning the best means of implementing the advisory opinion of the Court was a very wise one. That procedure would save time and would avoid further difficulties with regard to the application of the opinion. Further, while the proposal of Brazil, Cuba, Mexico, Syria and Uruguay (A/C.4/L.116/Rev.1) provided for the establishment of a commission which would meet for the first time on 1 July 1951, the seven-Power proposal (A/C.4/L.124) provided for the immediate establishment of a three-member committee to open negotiations with the Government of the Union of South Africa. In the circumstances, the French delegation felt that the latter proposal was a better one.

88. Mr. PEREZ CISNEROS (Cuba) wished to raise two points of order. First, he wished to know the Chairman's ruling on the suggestion made by the representatives of India, the Dominican Republic and Cuba that the Secretariat should prepare a working paper summarizing and comparing the proposals made.

89. Further, as it was already late, he felt that it was time to proceed to the election of the two members of the Special Committee on Information transmitted under Article 73 e of the Charter.

90. The CHAIRMAN said that the Secretariat would prepare the working papers requested, and that he intended shortly to proceed to the election of the two members of the Special Committee.

91. Mr. TAJIBAEV (Union of Soviet Socialist Republics) asked whether the general debate was already closed. He noted that many representatives had already discussed particular points, whereas he himself wished to speak on the problem as a whole.

92. The CHAIRMAN replied that he would not propose the closure of the general discussion until the end of the following meeting.

Information from Non-Self-Governing Territories (*continued*)

[Item 34]*

93. The CHAIRMAN announced that the Committee would proceed to elect two new members of the Special Committee. He quoted extracts from paragraphs 2 and 6 of the operative part of resolution 332 (IV) of the General Assembly and recalled that at the previous session of the General Assembly, Sweden and Venezuela had been elected for one year; accordingly the Fourth Committee was required to elect two new members to replace them. Resolution 322 (IV) did not lay down very clearly the term of the members the Committee was to elect. Having regard, however, to the General Assembly's intention of ensuring a certain continuity in the membership of the Special Committee

while at the same time enabling its membership to be varied to a certain extent by rotation, he thought that the Fourth Committee should now elect two new members for a term of two years.

94. He would proceed to hold elections in accordance with rules 92 and 94 of the rules of procedure of the General Assembly. After naming the fourteen countries which were members of the Special Committee as at present constituted, he invited the Committee to select two other countries.

95. Mr. PEREZ CISNEROS (Cuba) asked for further particulars concerning the interpretation of paragraph 2 of resolution 332 (IV). In his view, the rule laid down by the General Assembly was that members of the Special Committee were to be elected for a term of three years; the terms of two years and of one year mentioned in the resolution were exceptional. The General Assembly had already recognized the value of the Special Committee's work and had renewed its terms of reference. If the Special Committee was not again renewed by the General Assembly in 1952, the question of the term to be served by its members would be automatically settled. He therefore concluded that the two members to be elected should be elected for a term of three years.

96. The CHAIRMAN said that the two countries to be elected would be elected for at least two years. If the Special Committee were renewed for a further period by a decision of the General Assembly in 1952, the question as a whole would be dealt with then.

97. Mr. KHALIDY (Iraq) wondered whether the Committee could elect new members of the Special Committee for a term of office which might be longer than the life of that Committee.

98. Mr. S. RAO (India) agreed with the representative of Iraq. The terms of reference of the Special Committee expired in 1952, when the General Assembly would decide whether to renew it or not. He did not think that the new committee which might be set up at that time could be placed under an obligation to retain members who had been elected to sit on the existing Committee.

99. Mr. KHALIDY (Iraq) remarked that if the two new members of the Committee were elected for three years, other States would thereby have a smaller chance of participating in a new committee which might be set up in 1952.

100. The CHAIRMAN noted that paragraph 6 of resolution 332 (IV) laid down that the Special Committee should be "renewed" and that there was therefore no question of setting up a new committee. The representatives of Iraq and India were too literal in their interpretation of the recommendation. The intention had been to set up a body having continuity. It was for that reason that the system of rotation of the non-administering members had been instituted.

101. Mr. RYCKMANS (Belgium) remarked that the passage from paragraph 6 had not been quoted in full. The passage was: ". . . the question whether the Special Committee should be renewed for a further period, together with the questions of the composition and terms of reference . . .". He agreed with the construction placed upon the resolution by the representative of Iraq and said that it was improper to decide forthwith how the new committee that might be set up in 1952 was to be composed.

102. Mr. PEREZ CISNEROS (Cuba) agreed with the Chairman's interpretation and said that if the Committee elected new members for a term of three years, it would be acting in conformity with the spirit of resolution 332 (IV).

103. There was no need at the moment to place a precise construction on those passages of resolution 332 (IV); it would be preferable to deal with that question when it became really urgent, in 1952, when the question of the extension or renewal of the Special Committee would arise.

104. The CHAIRMAN invited the Committee to elect the two members of the Special Committee.

A vote was taken by secret ballot.

At the invitation of the Chairman, Mr. Supomo (Indonesia) and Mr. Abraham (Ethiopia) acted as tellers.

Number of ballot papers:	52
Invalid ballots:	0
Number of valid ballots:	52
Abstentions:	0
Number of valid votes cast:	52
Required majority:	27

Number of votes obtained:

Cuba	32
Burma	18
Pakistan	17
Sweden	15
Venezuela	11
Indonesia	4
Guatemala	2
Norway	1
Thailand	1
Peru	1

Cuba, having obtained the required majority, was elected a member of the Special Committee.

No other member having obtained the required majority, a second election was held, the only countries voted on being Burma and Pakistan.

A vote was taken by secret ballot.

Number of ballot papers:	44
Invalid ballots:	0
Number of valid ballots:	44
Abstentions:	0
Number of valid votes cast:	44
Required majority:	23

Number of votes obtained:

Pakistan	25
Burma	19

Pakistan, having obtained the required majority, was elected a member of the Special Committee.

Question of South West Africa: advisory opinion of the International Court of Justice (*continued*)

[Item 35]*

105. Mr. TAJIBAEV (Union of Soviet Socialist Republics) recalled that the question of South West Africa had been on the agenda of the various sessions of the General Assembly since 1946.

106. The General Assembly at its first session had, in resolution 9 (I), requested States administering territories under mandate to propose trusteeship agreements for approval. All the States concerned other than the Union of South Africa had complied with that recommendation of the General Assembly.

107. Subsequently, during the second part of the first session of the General Assembly, the Union of South Africa had announced its intention of incorporating South West Africa in the Union and had stated that the population of the territory had expressed its support of such action. In resolution 65 (I) the General Assembly had stated that it was unable to accede to the incorporation of the Territory of South West Africa in the Union of South Africa and considered that the African inhabitants of South West Africa had not yet secured political autonomy or reached a stage of political development enabling them to express a considered opinion on such an important question as incorporation of their territory. Under the same resolution the General Assembly had again recommended that the Mandated Territory of South West Africa should be placed under the International Trusteeship System and had invited the Government of the Union of South Africa to propose a trusteeship agreement for the territory. It had also noted the assurance given by the delegation of the Union of South Africa that, pending such agreement, the South African Government would continue to administer the territory in the spirit of the principles laid down in the Mandate, in other words, that it would respect the obligation to promote the advancement and well-being of the inhabitants of the territory.

108. After the decision taken by the General Assembly in its resolution 65 (I), the Union of South Africa had announced that it would not proceed with the incorporation of South West Africa in its territory and had undertaken to transmit to the General Assembly information on South West Africa under Article 73 e of the Charter.

109. At its second session, the General Assembly, by resolution 141 (II), had taken note of the decision of the Government of the Union of South Africa not to proceed with the incorporation of South West Africa, had again recommended that South West Africa should be placed under the Trusteeship System and had urged the Government of the Union of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the territory.

110. At its third session, the General Assembly had adopted resolution 227 (III), by which it had again recommended that the Government of the Union of South Africa should place South West Africa under the Trusteeship System, and, in the meantime, should continue to supply annually information on the administration of the territory.

111. As though in answer to those recommendations of the General Assembly, the Government of the Union of South Africa had announced, in a letter dated 11 July 1949 (A/929), that the Parliament of the Union of South Africa had passed the South West Africa Affairs Amendment Act, 1949, and that consequently no further information on the territory would be transmitted. The Trusteeship Council had examined that communication from the Government of the Union of South Africa and had concluded that the government had apparently given effect to its intention to bring about a form of closer association between South West Africa and the Union of South Africa. The Council had then informed the Assembly that as a result of the decision taken by the South African Government not to transmit any further information on the territory, it would be unable to carry out its functions under resolution 227 (III) of 26 November 1948.

112. The South West Africa Affairs Amendment Act, 1949, in fact tended, under the pretext of making the territory self-governing, to transform it into a mere province of the Union of South Africa. Thus, representatives of the territory in the House of Assembly and the Senate of the Parliament of the Union must be of European origin and the indigenous inhabitants, who formed about 90 per cent of the total population, could not participate in the election of those representatives.

113. Moreover, the attitude of the South African Government towards the General Assembly's decisions was revealed even more clearly in the statements made by the Prime Minister of that country at a Press conference on 28 November 1949. The Prime Minister had said that the United Nations claimed to be concerned with the fate of the non-European population of South West Africa and that it had opposed in principle any policy involving racial segregation and the establishment of reserves for the indigenous inhabitants. He had emphasized that the application of such principles would in practice result in a mixture of the various peoples in the urban areas and had added that the Union of South Africa retained sufficient national independence to reject such well-nigh suicidal measures. On another occasion, the Prime Minister had categorically stated that the Union of South Africa refused to place South West Africa under the International Trusteeship System and to transmit information on the administration of the territory or the legislative measures taken with regard to it, since the territory was now autonomous.

114. That had been the attitude of the Government of the Union of South Africa in November 1949. Nothing indicated that its attitude had changed since. It was therefore permissible to ask on what the delegations were relying in submitting to the Committee draft resolutions which would presumably have no other result than delay still further the settlement of a question which should be settled promptly.

115. So far the Union of South Africa had refused to conform to the recommendations of the General Assembly on South West Africa or to fulfil its obligations under the Mandate. Still more, it had taken measures which would lead to the incorporation of South West Africa in its territory, in violation of the relevant provisions of the Charter.

116. Accordingly the USSR delegation had thought fit to submit, at the General Assembly's fourth session, a proposal[8] censuring the Union of South Africa for passing the South West Africa Affairs Amendment Act, 1949, a measure which violated the Charter. However, the Anglo-American protectors of the Union of South Africa had persuaded the Committee to adopt another proposal which merely referred the question to the International Court of Justice.

117. In its advisory opinion, the International Court of Justice stated that the Union of South Africa had no right to annex South West Africa and was required by the Charter to transmit to the Organization reports on the administration of the territory. At the same time, as a result of pressure by the Anglo-American representatives, the Court had decided by a very slight majority, 8 votes to 6 to be exact, that the Charter did not impose on the Union of South Africa the obligation of placing the Territory of South West Africa under the International Trusteeship System. The Court had explained its decision by saying that the language of Articles 75 and 77 of the Charter was permissive, since those Articles spoke of territories which "may be placed" under the Trusteeship System; the Court had also pointed out that those two Articles referred to subsequent agreements by which the territories in question might be placed under the Trusteeship System and that the idea of "agreement" implied the consent of all parties.

118. The USSR delegation could not, for its part, support that view. In its opinion, Articles 75 and 77 were optional only in the sense that, in the mind of the authors of the Charter, mandated territories need not necessarily be placed under the Trusteeship System but might be declared independent. That meant that only two solutions could be contemplated in the case of the Mandated Territory of South West Africa: the territory might either be declared independent or placed under the International Trusteeship System. The first of those two solutions must be discarded temporarily since the territory was not yet sufficiently advanced politically and economically; South West Africa should therefore be placed under the International Trusteeship System. Moreover, Article 80, paragraph 2 of the Charter, which stated that "Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system", would lose its meaning completely if an interpretation different from that of the USSR delegation was given to Articles 75 and 77.

119. In brief, the Government of the Union of South Africa, by refusing to place the territory of South West Africa under the Trusteeship System and to supply information on the administration of that territory, became guilty of a violation of the Charter, which the General Assembly should note in the resolution it adopted on the question.

120. Mr. KHALIDY (Iraq) noted that the members of the Committee agreed that the advisory opinion of the International Court of Justice should be accepted. On the other hand, it appeared that the question of implementation gave rise to certain difficulties and differences of opinion, as was shown by the various draft resolutions submitted to the Committee.

121. He did not intend to indulge in recriminations or to restate arguments which were already old, particularly at a time when the Committee was considering a new factor, namely, the advisory opinion of the Court. The Court's opinion certainly constituted a powerful weapon, the efficacy of which should not be diminished by action which was too severe or too categorical, especially at a time of international tension.

122. His delegation's attitude towards the question of South West Africa was consistent with the attitude it had adopted from the outset; it regretted the lack of co-operation shown by the Government of the Union of South West Africa and considered that, by acting in that way, the South African Government had made a mistake which might well act as a boomerang.

123. His delegation had chosen the method advocated in the draft resolution of which it was one of the sponsors (A/C.4/L.124). As had already been said in the Committee, all the draft resolutions submitted accepted the advisory opinion, but they differed with regard to the method of applying it. There were two possible methods: the first was to draw up on paper a rigid and legally correct plan, but one which would cause the South African Government to be even more unbending and which would, in the end, leave the matter where it stood. The second method, a more flexible one, allowed of negotiations; it gave the South African Government a chance to change its attitude. It was that method which had been selected in the seven-Power resolution (A/C.4/L.124).

124. Some representatives had said the Fourth Committee should take its decision without considering the attitude of the South African Government. Others were convinced that that government would have its own way whatever resolution was adopted by the Committee. That was perhaps true, but the Government of the Union of South Africa should be given a last chance. In any event, the resulting delay would only be nine months. Four years had already passed without a solution. The United Nations had adopted strongly-worded resolutions on the matter since 1946. The time had come to attempt a new method, and an excellent one was provided by the advisory opinion of the Court.

125. Mr. INGLES (Philippines) reserved the right to speak later during the debate. For the time being, he wished to ask the South African representative for certain particulars which might assist the discussion and exercise a direct influence on the attitude to be adopted by the General Assembly.

126. He welcomed the assurance given by the South African representative that his government would carefully consider any resolution the General Assembly might adopt, but he had detected a discordant note at the beginning of the South African representative's statement. The latter had stated that the advisory opinion of the Court was in no way binding upon the parties. Mr. Inglés hoped that that statement was not intended to justify in advance a refusal to give effect to the resolution to be adopted by the General Assembly.

[8] See *Official Records of the General Assembly, Fourth Session, Plenary Meetings, Annex*, p. 106.

127. The Prime Minister of South Africa had analysed the advisory opinion of the Court and had concluded that certain interpretations of that opinion might lead the United Nations to intervene openly in the internal affairs of South Africa, and that the South African Government was not disposed to agree to any interference whatsoever. Mr. Inglés wondered what exactly was the attitude of the South African Government. The declaration made by the South African representative at the beginning of his speech had increased the Philippine representative's misgivings regarding the South African Government's attitude towards the advisory opinion of the International Court of Justice. It was true that the Court's opinion was not an enforceable judgment, but the Court itself had stated that its opinion was addressed to the party which had requested it, namely, the General Assembly; the opinion was definitive so far as the General Assembly was concerned. The sponsors of resolution 338 (IV) had expressly stated that they expected the Court to decide once and for all the legal aspects of the question of the Territory of South West Africa. The Government of the Union of South Africa had taken part in the hearings of the Court; it had had every opportunity to state its case and it was too late for it to question the validity of the advisory opinion.

128. He was glad to note that all the draft resolutions recognized that the General Assembly was bound by the advisory opinion. He hoped that the South African representative would adopt the same attitude and would make a public statement to that effect as soon as possible, in order to expedite the Committee's discussions. Accordingly his questions to the South African representative were: Did the South African Government accept the advisory opinion of the International Court of Justice? Was the South African Government ready to submit to the General Assembly annual reports on the administration of the Territory of South West Africa and to transmit to it petitions from the inhabitants of that territory? The South African Government had had time to define its attitude since the publication of the Court's advisory opinion; it would be of great assistance to the Committee if it could have precise information on that point.

The meeting rose at 6.55 p.m.

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