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Chairman: Prince WAN WAITHAYAKON (Thailand).

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

[Item 35]*

1. Mr. POLLERI CARRIO (Uruguay) said that, in the light of the discussion that had taken place on the question of South West Africa, it seemed that the only solution likely to be successful was a compromise which would take into account the interests of all parties while conforming to the letter and the spirit of the United Nations Charter. Therefore, with that end in view, he proposed to make a rapid survey of the various proposals submitted in order to find out what they had in common, taking as a basis the advisory opinion of the International Court of Justice (A/1362) which had received fairly general support.

2. The proposals could be divided into two main groups: in the first group there was the proposal submitted by Denmark and seven other countries (A/C.4/L.124 and A/C.4/L.124/Add.1) which accepted the advisory opinion of the Court, urged the Government of the Union of South Africa to give effect to it, and established a committee to confer with that Government on the implementation of the advisory opinion. In the other group, there were draft resolutions A/C.4/L.116/Rev.1 and A/C.4/L.128 and the draft resolutions contained in documents A/C.4/L.121 and A/C.4/L.122, all of which, besides endorsing the Court's advisory opinion, provided that the mandates system should be applied immediately to the Territory of South West Africa and that the territory should, in the future, be placed under United Nations trusteeship.

3. All those proposals were based on the Court's advisory opinion. It should not therefore prove impossible to reach an agreement on that common basis, since the only divergence of views related to the application of the advisory opinion. If the Committee could reach such an agreement, the resulting unanimous vote would give its resolution far more weight.

4. Mr. Polleri Carrio would be prepared to support a compromise text which would maintain the League of Nations mandates system in the Territory of South West Africa, in accordance with the opinion expressed by the Court and by the Union of South Africa. Under such a text, a committee would invite the Union of South Africa to prepare a trusteeship agreement, similar to the existing agreements.

5. Mr. DE MARCHENA (Dominican Republic) said it would have been easy to settle the question of South West Africa if the Mandatory Power had expressed to the General Assembly its desire to administer the territory in full accordance with the letter and spirit of the Mandate; such a statement had been made by its representative, Mr. Egeland, during the twenty-first session of the Assembly of the League of Nations.¹

6. It was very important to decide on the scope of the political, social and legal aspects of the dispute between the Government of the Union of South Africa and the United Nations which had led the Organization to ask for an advisory opinion from the International Court of Justice.

7. The aim of the United Nations, representing the international community, was to protect the interests of the inhabitants of South West Africa. Those inhabitants had inalienable rights; for those rights had been recognized in Article 22 of the League of Nations Covenant as well as in Article 80 of the United Nations Charter, which were the cornerstone of the sacred trust assumed by the Union of South Africa.

8. In adopting the Trusteeship Agreement for Somaliland (316th plenary meeting), the Assembly had made great improvements over the other trusteeship agreements, which had been drafted to replace the mandates of the League of Nations.

¹ See *League of Nations, Official Journal, Special Supplement No. 194*, p. 32-33.

* Indicates the item number on the General Assembly agenda.

9. The new Trusteeship Agreement settled the principle of sovereignty with respect to territories placed under mandate or trusteeship. Sovereignty was vested in the population of the territory and no foreign Power, whether it was a Mandatory Power by virtue of Article 22 of the Covenant or an Administering Authority under the United Nations Trusteeship System, could arrogate that sovereignty to itself. He had himself stated on one occasion that sovereignty over such territories was "in abeyance" and that view had been reiterated by one of the members of the Court submitting a separate opinion (A/1362, p. 150). The General Assembly could not admit that the Union of South Africa had any right to sovereignty over the Territory of South West Africa, nor could it agree to the outright annexation of the territory or to its incorporation in the Union of South Africa.

10. In 1947, the Fourth Committee had approved a draft resolution which made it clear that all mandated territories should be placed under trusteeship until they gained autonomy or independence.² It was unfortunate that that draft resolution (A/C.4/125) had failed to gain the two-thirds majority necessary for adoption by the General Assembly. The fact remained, however, that the International Court of Justice had recognized that the Union of South Africa had a moral obligation to place South West Africa under trusteeship.

11. He next summarized the main points of the advisory opinion delivered by the Court. The Court had stated that South West Africa was a territory under mandate; it had reaffirmed the obligation to accept the compulsory jurisdiction of the Court over any disputes, in accordance with the terms of the Mandate for South West Africa and with Article 37 of the Statute of the Court; it had declared that the United Nations, representing the international community, was legally qualified to take over the exercise of the supervisory functions previously exercised by the League of Nations with regard to the administration of the territory; finally, the Court had stated that the Union of South Africa acting alone did not have the competence to modify the international status of the territory and that it could only do so acting with the consent of the United Nations.

12. It was clear from the first point that the Union of South Africa was obliged to fulfil the terms of the Mandate of 17 December 1920 and that it was now bound to account retroactively for its administration of South West Africa, in accordance with the spirit and the letter of Article 22 of the Covenant of the League of Nations.

13. Regarding the second point, the Union of South Africa was obliged to recognize the compulsory jurisdiction of the Court over any disputes between the Mandatory and the other Members of the international community, represented formerly by the League of Nations and henceforth by the United Nations. Accordingly, by taking direct action, the General Assembly could turn the jurisdiction of the Court, until then exercised in a non-contentious matter, into jurisdiction in a dispute and so open the way for the operation of article 7 of the Mandate.

² See *Official Records of the General Assembly, Second Session, Fourth Committee*, 43rd and 44th meetings.

14. He did not wish to dwell upon the rights of the population of South West Africa for no one had ever denied those rights, and General Assembly resolutions 65 (I), 141 (II), 227 (III) and 337 (IV) were all based on the recognition of them.

15. Finally, it followed from the fact that the Government of the Union of South Africa was not entitled to modify the status of the territory without the consent of the United Nations that the underlying principles of Article 80 and of the Preamble of the Charter should be reaffirmed. The South African Government, in its capacity as a Member State, now had an opportunity to put those principles into practice and to put an end to the dispute which had arisen between the majority in the United Nations and one of the Members of the Organization.

16. His country, which had always accepted the compulsory jurisdiction of the Court, endorsed the advisory opinion. The only outstanding question was how the Mandate for South West Africa could be brought into force again. Some delegations had proposed that a special committee should be set up which would take the place of the former Permanent Mandates Commission and would invite the Mandatory, in accordance with the provisions of the Mandate, to submit reports on its administration and to transmit to the committee any petitions from the inhabitants of the territory. The other solution, which appeared in draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1, was to seek an agreement with the Mandatory Power before bringing the Mandate over South West Africa back into force, in order to determine the composition of the organs which would be necessary for that purpose and the way in which the Union of South Africa would account for its administration to the international community. He noted that the sponsors of that draft resolution had avoided using the word "negotiations", which the General Assembly would not have been able to accept.

17. Thus the two proposals, which were both based on endorsement of the advisory opinion of the Court, differed only on the question of the procedure to be followed. The Fourth Committee should adopt the solution which would best promote the prestige of the United Nations and the principle of the right of peoples to self-determination.

18. It was obvious that if the General Assembly decided to bring the Mandate over South West Africa back into force, it would have to rely on the collaboration of the Government of the Union of South Africa. It would be a very serious blow for the international community if the Union of South Africa refused to comply with a resolution adopted by the General Assembly asking it to submit reports, to transmit petitions and to be represented in a committee to take the place of the Permanent Mandates Commission, and if, in addition, it refused to recognize the full competence of the General Assembly in connexion with the Territory of South West Africa. His delegation therefore felt that the Assembly should be realistic in the matter and should try every possible method of conciliation. He wondered whether it would not be possible to achieve a compromise between the two trends of thought in the Committee by ironing out the only remaining difference between them, which concerned the measures

the United Nations should take in order to fulfil its responsibilities towards South West Africa.

19. He also hoped that the sponsors of draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1 would recognize the need to include a member of the Trusteeship Council among the persons appointed to confer with the Government of the Union of South Africa.

20. His delegation reserved the right to take part in the discussion on each draft resolution. It would vote in favour of any text which was based on the interests of the population of the territory and would bring the Mandate back into force with the co-operation of the Government of the Union of South Africa.

21. He hoped that the Committee would succeed in finding a satisfactory solution which would gain the necessary two-thirds majority in the plenary meeting.

22. Mr. RIFAI (Syria) said he would confine himself to making a few remarks in his capacity as one of the sponsors of the joint draft resolution A/C.4/L.116/Rev.1. Although the main question now appeared to be concerned with the procedure the Assembly should adopt, the discussion was nevertheless indissolubly linked to the actual substance of the problem. All the members of the Committee accepted the Court's advisory opinion as a whole, in spite of the reservations made by certain delegations on various parts of that opinion. All members recognized that the administration of South West Africa was an international trust and that the dissolution of the League of Nations had not put an end to the obligations imposed upon the Union of South Africa by the Mandate.

23. It had been in order to give effect to the advisory opinion that his delegation had joined with others in submitting the draft resolution contained in document A/C.4/L.116/Rev.1. The delegations that did not agree with the provisions of that draft resolution based their attitude on two considerations. In the first place, while accepting the advisory opinion, they did not think it should be put into effect immediately, for they argued that its terms were too vague as regards its application. Secondly, they felt that the Assembly should first hear the opinion of the Government of the Union of South Africa on the measures necessary to give effect to the advisory opinion.

24. With regard to the first argument, he would say that the Court had clearly indicated in its advisory opinion the way in which the provisions should be put into effect. It had stated that the United Nations exercised the same supervisory functions as the League of Nations had done and that the Union of South Africa was still bound to submit reports and transmit petitions. It had therefore recommended the restoration of the supervisory methods provided for under the Mandate. His delegation did not think there was any need for negotiations on that subject.

25. The attitude taken in that respect by Iraq, the United States and the other sponsors of the draft resolution in documents A/C.4/L.124 and A/C.4/L.124/Add.1 did not tally with their unreserved acceptance of the advisory opinion.

26. He thanked the representative of the Union of South Africa for his statement (191st meeting) that

his government would take into account any resolution adopted by the Fourth Committee and the General Assembly. In order to help the South African Government in its task, some interpretation should be given of the way in which the advisory opinion was to be put into effect. Any proposal for the establishment of a negotiating committee would serve only to confuse the issue and lead to unnecessary delays.

27. He was surprised that the United Kingdom representative should have stated (191st meeting) that the methods recommended by the sponsors of draft resolution A/C.4/L.116/Rev.1 were not clear. He cited subparagraph (c) of paragraph 4 of the operative part of that draft resolution, which provided that the proposed commission for South West Africa should decide upon its own rules of procedure and for that purpose should, as far as possible, follow the procedure adopted in the matter by the Permanent Mandates Commission of the League of Nations for the consideration of reports and petitions. Thus the proposal was simply to restore a procedure with which the Union of South Africa itself had complied for twenty years.

28. Regarding the composition of the proposed commission for South West Africa, he explained that the sponsors of the joint draft resolution had intended it to follow as closely as possible the pattern set by the Permanent Mandates Commission of the League of Nations. He would, however, be prepared to accept any amendment which would eliminate all doubt on the subject. The only unavoidable difference between the two commissions would be that certain Powers which had been Members of the League of Nations would not be able to be represented on the new commission, because they were not Members of the United Nations.

29. Turning to the second argument, he was convinced that it was imperative for the United Nations to have the co-operation of the Government of the Union of South Africa if the advisory opinion was to be given effect. Nevertheless, the Committee had to consider what should be done if the South African Government was not prepared to comply with the terms of the advisory opinion. It was hoping to receive as soon as possible a final statement on that subject from the delegation of the Union of South Africa. If the Union of South Africa gave a favourable reply, the draft resolution (A/C.4/L.116/Rev.1) submitted by Brazil, Cuba, Mexico, Syria and Uruguay would not place any obstacles in the way of the essential negotiations.

30. In conclusion, he pointed out that it was not possible to achieve complete conformity with the methods followed by the Permanent Mandates Commission. The Court had itself recognized that fact in stating that the degree of supervision to be exercised by the General Assembly should conform "as far as possible" to the procedure followed in that respect by the Council of the League of Nations (A/1362, p. 138).

31. The draft resolution of which he was one of the sponsors in no way prevented the Assembly from entering into negotiations regarding the procedure to be applied. The Government of the Union of South Africa should make its attitude known on that subject either to the Fourth Committee or to the proposed commission for South West Africa. Its views would be considered seriously and objectively by either organ.

32. His delegation thought that the draft resolution submitted by the United States and other Powers (A/C.4/L.124 and A/C.4/L.124/Add.1) was unacceptable and, furthermore, that it showed a lack of political wisdom.

33. Mr. LIU (China) recalled that his delegation had always held the view that the Union of South Africa was legally obliged under the Charter to submit to the United Nations a draft trusteeship agreement for the Territory of South West Africa. Although the Court had not gone as far as that in its advisory opinion, his delegation was prepared to **accept and endorse the advisory opinion**, for the Court had not left any doubt as to the international obligations of the Union of South Africa in the matter. In the terms of the Court's opinion, South West Africa was a territory under the international Mandate assumed by the Union of South Africa on 17 December 1920, and the Union of South Africa continued to have the international obligations stated in the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions were to be submitted. Finally, the Court had decided 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 status of the territory rested with the Union of South Africa acting with the consent of the United Nations.

34. In his opinion, those terms were so clear that the Government of the Union of South Africa was unquestionably obliged to give effect to them. Thus, strictly speaking, it would not be appropriate to hold any negotiations on the points he had just covered.

35. He could not agree with those who contended that the procedure to be followed by the United Nations in exercising its supervisory functions over the administration of South West Africa could be settled by negotiation between the United Nations and the Mandatory Power. The Court had made it clear that the General Assembly and the Trusteeship Council were legally qualified to take over the supervisory functions previously exercised by the Council of the League of Nations. In that connexion, he quoted two passages from the advisory opinion, to the effect that the United Nations had every right to exercise the supervisory functions formerly pertaining to the League of Nations. The Court recognized the existence of an international organ performing functions similar to, if not identical with, the functions exercised by the Council of the League of Nations. He also quoted a passage from the advisory opinion which stated that the Court had arrived at the conclusion that the General Assembly of the United Nations was legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the territory and that the Union of South Africa was under an obligation to submit to supervision of the General Assembly and to render annual reports to it.

36. Although the Court had not mentioned the Trusteeship Council by name, it was clear from the wording

of the opinion and from the description of the Trusteeship Council contained in Articles 85 and 87 of the Charter that the General Assembly would, if it so desired, be entitled to appoint the Trusteeship Council as the organ which would exercise supervisory functions over the administration of South West Africa.

37. In 1947, the Union of South Africa had submitted a report on the administration of the territory,³ and in 1948 it had replied to a questionnaire drawn up by the Trusteeship Council.⁴ Moreover, when the Union of South Africa had subsequently ceased to submit such information, it had not pointed out that the Trusteeship Council was not the competent organ to exercise such supervision.

38. The Chinese delegation agreed with the Philippine delegation (194th meeting) that the methods proposed by the Indian and Indonesian and Philippine delegations (A/C.4/L.121) represented a concession to the Union of South Africa. In that spirit, the Chinese delegation supported the compromise text contained in document A/C.4/L.116/Rev.1, as modified by amendment A/C.4/L.129, in the hope that the South African Government would accept the proposal in the same spirit.

39. To be as conciliatory as possible, the Chinese delegation would abstain from voting on the USSR amendment (A/C.4/L.126), which was not likely to facilitate the implementation of the advisory opinion.

40. The Chinese delegation would have liked to support, with some modifications, the draft resolution submitted by the United States and other Powers (A/C.4/L.124 and A/C.4/L.124/Add.1); but, to its great regret, it had been unable to obtain the agreement of those Powers to the modifications which it deemed indispensable. In order not to complicate the debates, it would not submit its suggestions to the Committee, but it was unable, in those circumstances, to support that draft resolution.

41. The Chinese delegation had noted with satisfaction the Court's statement 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. The Chinese delegation hoped that the continuation of the mandates system in respect of South West Africa would be merely temporary and that the Union of South Africa would take into account the conciliatory attitude of the United Nations and would successfully negotiate and conclude a trusteeship agreement with the Organization.

42. The Chinese delegation would therefore vote for the text submitted by India, Indonesia and the Philippines on the modification of the international status of the Territory of South West Africa (A/C.4/L.122) and for the draft resolution submitted by Cuba and four other delegations (A/C.4/L.128) on the submission of a draft trusteeship agreement by the Union of South Africa.

³ See *Report by the Government of the Union of South Africa on the Administration of South West Africa for the year 1946*, Pretoria, 1947.

⁴ See *Official Records of the Trusteeship Council, Third Session, Supplement*, document T/175.

43. Mr. ALI (Pakistan) did not intend to restate his delegation's position on the question of South West Africa, since that position was well known; nor did he intend to repeat the reasons which had led his delegation to adopt that position. The Pakistan delegation maintained its view that all mandated territories should acquire autonomy.

44. He would refrain from restating the arguments already put forward by other delegations during the debate and from taking part in the legal discussion that had taken place in the Committee. The situation was perfectly clear: South West Africa was a mandated territory; the International Court of Justice had confirmed that point of view in the opinion it had given on 11 July 1950 (A/1362). The Court had stated unequivocally that South West Africa was a territory under the international Mandate assumed by the Union of South Africa and that the Mandate had been created in the interest of the inhabitants of the territory and of humanity in general, as an international institution for carrying out a sacred trust of civilization. The Court had added that the Union of South Africa acting alone was not competent to modify the international status of South West Africa and that the competence to determine and modify that status rested with the Union of South Africa acting with the consent of the United Nations. The Court had also stated that the General Assembly of the United Nations was legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of South West Africa and that the Union of South Africa was under an obligation to submit to supervision of the General Assembly and to render annual reports to it.

45. The differences of opinion among delegations on the question of South West Africa seemed to be confined fundamentally to the question whether or not the United Nations was competent to intervene and to take action without previously consulting the Government of the Union of South Africa.

46. It was clearly stated in the advisory opinion of the International Court of Justice that the Union of South Africa acting alone was not competent to modify the international status of the Territory of South West Africa. Accordingly, the Union of South Africa, which exercised the functions of a Mandatory Power with regard to the territory, could not modify the international status of the territory. Such a situation could not continue indefinitely. The territory had been placed under an international mandate in order that it might prepare itself, with the assistance of the Mandatory Power, for autonomy and independence. If that was indeed the case, the only question to be solved was whether the administration of the territory should be left to the Union of South Africa or whether the territory should be placed under the Trusteeship System.

47. Experience had shown that it was preferable for States adjacent to a territory which was progressing towards autonomy and independence to refrain, as far as possible, from intervening in the affairs of that territory, so that when it became independent, their relations with it would be based on the greatest possible freedom and be calculated to preclude any possibility of a dispute or conflict. The Union of South Africa might argue that it was better acquainted with

the Territory of South West Africa than any authority to which the United Nations might entrust the administration of the territory; such an argument could not, however, outweigh the aforementioned considerations. The Union of South Africa should not ignore that aspect of the question and should realize that it might be in its own interests to relinquish its responsibilities for the progress of the population of the territory towards independence.

48. With regard to the organ of the General Assembly which should carry out supervisory functions over the Mandated Territory of South West Africa, the Pakistan delegation believed that a decision to entrust that task to the Trusteeship Council would be in full conformity with the spirit of the Charter.

49. In conclusion, he reserved his delegation's right to give its views later on the various draft resolutions submitted to the Committee.

50. Mr. S. RAO (India), speaking on a procedural point, observed that it might be advisable for the Chairman to inform the Committee of the order in which he intended to put the various draft resolutions and amendments to the vote.

51. The CHAIRMAN pointed out that the draft resolutions submitted to the Committee fell into two separate categories, since some of them were general, whereas others dealt with specific aspects of the question. Draft resolutions A/C.4/L.116/Rev.1, A/C.4/L.124 and A/C.4/L.124/Add.1, and the amendments contained in document A/C.4/L.129 belonged to the first category. Moreover, those amendments had been accepted by the sponsors of joint draft resolution A/C.4/L.116/Rev.1. In accordance with the normal procedure, the draft thus amended (A/C.4/L.116/Rev.1 and A/C.4/L.129) should be put to the vote first, since it had been submitted first. However, the representative of Denmark had proposed (194th meeting) that the Committee should first take a decision on draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1, although it had been submitted later. The Committee would have to decide that point, under rule 130 of the rules of procedure. With regard to the draft resolutions which fell into the second category, the Committee would have to vote first on the USSR amendment (A/C.4/L.126) and then on draft resolutions A/C.4/L.122 and A/C.4/L.128, in the order in which they had been submitted, unless it was otherwise decided.

52. Mr. MANTILLA (Ecuador) reviewed briefly the background of the question of South West Africa before defining his delegation's position.

53. The Territory of South West Africa had been a German colony until the end of the First World War. It had then been decided, in accordance with the provisions of Article 22 of the Covenant of the League of Nations, that a mandate for the Territory of South West Africa should be entrusted to His Britannic Majesty, to be exercised in his name by the Government of the Union of South Africa. Subsequently, the General Assembly of the United Nations had recommended at each of the four regular sessions it had held since its establishment that the territory should be placed under the International Trusteeship System and had

invited the Government of the Union of South Africa to submit a trusteeship agreement to that effect. A crucial point in the development of the question had now been reached; it was therefore essential for the General Assembly to solve the problem satisfactorily during its current session.

54. The delegation of Ecuador had listened carefully to all arguments that had been put forward during the discussion and had studied all the relevant documents, especially the advisory opinion (A/1362) given by the International Court of Justice in pursuance of resolution 338 (IV) of the General Assembly. It had also given close consideration to the draft resolutions and amendments that had been submitted.

55. Of all those various proposals, the delegation of Ecuador had decided to support the one which not only accepted the advisory opinion of the International Court of Justice, but also provided for reasonable measures to implement it. It would therefore vote for the draft resolution submitted by the delegations of Brazil, Cuba, Mexico, Syria and Uruguay (A/C.4/L.116/Rev.1).

56. At the same time, the delegation of Ecuador was fully aware that, if concrete results were to be obtained and if the problem was to be settled satisfactorily, a large majority of the General Assembly must agree on a clear and definitive text providing for all the necessary measures of implementation. It therefore appreciated the spirit of co-operation which had led the delegations of India, Indonesia and the Philippines to withdraw (194th meeting) their draft resolution (A/C.4/L.121) and merely to retain its essential principles in the form of an amendment (A/C.4/L.129) to the draft resolution proposed by Brazil, Cuba, Mexico, Syria and Uruguay (A/C.4/L.116/Rev.1).

57. The delegation of Ecuador appealed to the Government of the Union of South Africa to give due regard to the majority's sincere desire to reach agreement in the matter. It would be highly desirable for the Government of the Union of South Africa to share in the General Assembly's decision on South West Africa.

58. In that connexion, the representative of Ecuador drew the Committee's attention to the observations made at the 191st meeting by the representative of the Union of South Africa. The representative of the Union of South Africa had said that 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. He had added that the nature of the resolution would have an important influence on the decision of the Government of the Union of South Africa; that the Union of South Africa did not wish to close the door to the friendly solution of a question which had been in dispute for so long and, lastly, that the time had come not to seek points of disagreement but to build the foundations for agreement.

59. The delegation of Ecuador had associated itself with the delegations of Cuba, Guatemala, Mexico and Uruguay in submitting a draft resolution (A/C.4/L.128) which supplemented, in certain respects, the principal draft resolution (A/C.4/L.116/Rev.1). Under

that draft resolution, the General Assembly, for the fifth time, invited the Union of South Africa to place the Territory of South West Africa under the International Trusteeship System and requested the South African Government to submit to the General Assembly not later than 1 June 1951 a draft trusteeship agreement, to be examined by the Trusteeship Council, which would present a report thereon to the sixth session of the General Assembly.

60. It was to be hoped that when informing his government of the intentions of the five sponsors of draft resolution A/C.4/L.128, the representative of the Union of South Africa would lay stress on their sincere and fervent desire that the Territory of South West Africa should be placed under the International Trusteeship System so that it could eventually achieve its independence. The delegation of Ecuador trusted that all the members of the Committee, including the representative of the Union of South Africa, would vote in favour of that draft resolution.

61. Mr. MAGANA (El Salvador) said that his delegation was one of the sponsors of draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1, concerning the advisory opinion of the International Court of Justice on the important question of South West Africa.

62. After the brilliant juridical analysis of that question made by the representative of Brazil (190th meeting), whose statement should serve as a guide to the members of the Committee, Mr. Magana would not himself speak at any length.

63. In its advisory opinion the International Court of Justice analysed the problem of South West Africa with great lucidity and reached commendable conclusions. Those conclusions corresponded exactly with the views of most members of the Committee, who, like the delegation of El Salvador, wished to see the territory placed under the Trusteeship System so that it might enjoy, with the assistance of the Administering Authority, all the benefits of civilization.

64. The joint draft resolution (A/C.4/L.124 and A/C.4/L.124/Add.1) accepted the advisory opinion of the International Court of Justice and called for the establishment of a committee of three members to confer with the Union of South Africa concerning measures necessary to implement that opinion. Naturally such a body would represent the United Nations effectively, since it would be appointed with the approval of the General Assembly.

65. The representative of El Salvador could not agree with the representative of Cuba (194th meeting) that that draft resolution was devoid of adequate juridical foundations. In reality, the draft resolution embraced all the necessary elements, since it not only repeated the whole of the Court's advisory opinion, but in addition proposed a procedure which would make it possible to find a satisfactory solution to the problem. To contend that such a draft resolution was juridically unfounded would be tantamount to disputing the legal validity of the advisory opinion on which it was based.

66. The other draft resolutions submitted to the Committee were also of undoubted legal validity and differed little, as to their substance, from the joint draft

resolution (A/C.4/L.124 and A/C.4/L.124/Add.1); but the latter proposed a procedure which would involve some delay in the implementation of the advisory opinion, and in comparison with the other proposals had the certain advantage of not seeking to solve with undue haste a problem which would be solved in the normal course of events when the parties concerned examined it. Of course, if there were already agreement between the parties, it would be possible to settle the question without further delay; but that did not seem to be the case.

67. In his statement at the 191st meeting, the representative of the Union of South Africa had said that his government did not consider the advisory opinion of the International Court of Justice to be binding on the parties concerned. Such a view was to some extent justified, since an opinion, whether given by an individual or by an organization, could not impose obligations. It was nevertheless true that a problem involving the future of the inhabitants of South West Africa could not be solved unilaterally. It was the duty of the United Nations, whose essential aim was to promote the welfare of humanity and create conditions of peace in the world, to ensure that the solution should be in conformity with the interests of the people of the territory; moreover, there would have been no point in consulting the International Court of Justice, the highest judicial organ of the United Nations, if its opinion was not to be respected.

68. The delegation of El Salvador therefore trusted that the Union of South Africa would comply with the Court's opinion, as it was urged to do in the joint draft resolution (A/C.4/L.124 and A/C.4/L.124/Add.1).

69. In that connexion, the representative of El Salvador drew the attention of members of the Committee to certain passages of the advisory opinion which referred to the past attitude and statements of the Union of South Africa. For example, it was stated on page 135 of the Court's advisory opinion (A/1362) that: "In a letter of July 23rd, 1947, to the Secretary-General of the United Nations, the Legation of the Union referred to a resolution of the Union Parliament in which it was declared 'that the Government should continue to render reports to the United Nations Organization as it has done heretofore under the Mandate'. It was further stated in that letter: 'In the circumstances the Union Government have no alternative but to maintain the *status quo* and to continue to administer the Territory in the spirit of the existing Mandate'." Higher up on the same page, it was stated: "The Union Government will nevertheless regard the dissolution of the League as in no way diminishing its obligations under the Mandate, which it will continue to discharge with the full and proper appreciation of its responsibilities until such time as other arrangements are agreed upon concerning the future status of the Territory."

70. There was no reason to believe that those statements, by which the South African Government had formally recognized its obligations in the matter three years previously, were any less valid at present. Those were international obligations which could not be impaired by national legislation. Nevertheless, the problem should be solved without excessive haste, par-

ticularly in a period of international tension such as that through which the world was at present passing.

71. The representative of El Salvador understood from the statement in the advisory opinion that "In the circumstances the Union Government have no alternative but to maintain the *status quo*" that the Government of the Union of South Africa, having considered a number of alternatives, had decided that the sole solution was to maintain the *status quo*.

72. In conclusion, he expressed the hope that the Committee would adopt the draft resolution of which he was a joint sponsor (A/C.4/L.124 and A/C.4/L.124/Add.1) and would thus enable the United Nations fully to carry out its responsibilities in that field.

73. Mr. S. RAO (India), on a point of order, recalled that the representative of Denmark had asked (194th meeting) that the Committee should vote first on draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1, and requested the Chairman to put the Danish motion to the vote immediately. It would help many delegations, including that of India, to know the order in which the various draft proposals submitted were to be put to the vote; the outcome of the vote on the Danish motion might cause the delegation of India to endeavour to combine the draft resolution submitted by India, Indonesia and the Philippines (A/C.4/L.122) with draft resolution A/C.4/L.128.

74. Mr. PEREZ CISNEROS (Cuba) supported the Indian representative's proposal and wished to put two questions to the Secretariat.

75. He recalled that it had been agreed at the 185th and 187th meetings that the Secretariat would consult the appropriate Department on the question of the time limit to be allowed delegations for any corrections they might wish to make to summary records. He would like to know the outcome of those consultations.

76. Secondly, the representative of Brazil had asked the Secretariat to publish certain communications relating to the Territory of South West Africa (187th meeting); but those communications, which would be most useful to the Fourth Committee and might influence the vote on the draft resolutions, had not yet been published. The publication of those communications would be in conformity with the opinion recently given by the International Court of Justice on the question of petitions from the territory. He would like to know what steps the Secretariat had taken in that connexion.

77. Mr. HOO (Assistant Secretary-General in charge of the Department of Trusteeship and Information from Non-Self-Governing Territories) replied that the first question raised by the representative of Cuba had been discussed with the authorities of the Department concerned, and had been solved to the satisfaction of all. As for the second question, the Secretariat had made no arrangements to publish the communications referred to, since the Committee had come to no decision on the matter when it had been raised by the delegation of Brazil.

78. Mr. PEREZ CISNEROS (Cuba) asked the Chairman to consult the Committee on that subject so that a decision could be taken.

79. In reply to Mr. S. RAO (India), the CHAIRMAN said that he had intended to wait until the end of the general discussion before putting to the vote the Danish representative's motion that draft resolution A/C.4/L.124 and A/C.4/L.124/Add.1 should be voted on first. He was, however, quite willing to put that motion to the vote at once if there was no objection.

80. Mr. S. RAO (India) repeated that the task of many delegations, more particularly that of India, would be made easier by an immediate vote on the Danish representative's proposal.

81. Mr. LANNUNG (Denmark) said that he had no objection to an immediate vote on his motion that resolution A/C.4/L.124 and A/C.4/L.124/Add.1 should be voted on first.

82. The CHAIRMAN put the Danish representative's motion to the vote.

There were 21 votes in favour, 21 against and 4 abstentions. The motion was not adopted.

The meeting rose at 1.15 p.m.