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**Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).**

**Question of South West Africa: report of the *Ad Hoc* Committee on South West Africa (A/2475 and Add.1 and 2, A/C.4/L.305, A/C.4/L.306) (*continued*)**

[Item 36]\*

1. Mr. HUSAIN (India) reminded the Committee that he had said at the previous meeting that consultations were in progress among various delegations with a view to devising a draft resolution that would be acceptable to a large number of delegations. As a result of those consultations, a number of delegations had agreed upon two new draft resolutions, now submitted to the Committee in documents A/C.4/L.305 and A/C.4/L.306. The Burmese and Indian delegations, feeling that in a question of such significance there should be as much unanimity, co-operation and understanding as possible, were happy to be among the sponsors of the two draft resolutions and had consequently withdrawn their earlier joint draft resolution (A/C.4/L.304). In the course of his statement at the previous meeting, he had made a few suggestions, one or two of which were contained in that earlier draft resolution; inasmuch, therefore, as the Burmese and Indian delegations had agreed to sponsor the two new draft resolutions, any such suggestions were automatically withdrawn with the withdrawal of draft resolution A/C.4/L.304.

2. U ON SEIN (Burma) associated his delegation with the observation of the Indian representative. The Burmese delegation had willingly agreed to withdraw the original joint draft resolution with a view to obtaining a greater degree of unanimity on the question of South West Africa in the Committee.

3. Turning to the general question of South West Africa, he pointed out that the International Trusteeship System was a more progressive system than the former Mandates System it had replaced, recognizing as it did the principle of international control over a number of territories which had been mere property or war booty, to be disposed of as certain States might wish. The Charter formed the nucleus of the present highly developed system of trusteeship, which had clearly defined the rights and obligations of the United Nations and the Administering Authorities regarding

\* Indicates the item number on the agenda of the General Assembly.

dependent peoples. It was the responsibility of the Powers which administered such peoples in the Non-Self-Governing or Trust Territories to help them progressively to attain a full measure of self-government.

4. In the light of those considerations, the Burmese delegation, whatever might be its views with regard to the administration of the territories in question, had admired the attitude of those Powers that had voluntarily placed all such territories under the United Nations Trusteeship System. South West Africa, administered by the Union of South Africa, was the only former mandated territory of the League of Nations that had neither achieved independence nor been placed under the Trusteeship System; thus it was denied all the rights ensured for such territories under the Trusteeship System and the basic objectives of the system, as set out in Article 76 of the Charter, did not apply to it.

5. Without committing his delegation to anything that might restrict its freedom in appraising the report of the Trusteeship Council (A/2427), he would point out that while various Trust Territories had been going through the different stages of evolution towards their ultimate independence or self-government within the meaning of the list of factors adopted by the General Assembly at its seventh session (resolution 648 (VII)) and by the Fourth Committee at the present session (A/C.4/L.279), the inhabitants of South West Africa had been deprived of the progress they could have made under the supervision of the United Nations. That was the more regrettable in the face of the solemn appeals addressed to the Government of the Union of South Africa by the General Assembly at preceding sessions and of the fact that those appeals had been supported, during the sixth session, by the advisory opinion of the International Court of Justice,<sup>1</sup> which had specifically stated that the South African Government continued to have international obligations with respect to South West Africa.

6. The General Assembly had also urged the South African Government to submit reports on its administration of the territory and to transmit petitions to the United Nations from communities or sections of the population. While the exercise of sovereignty was admittedly vested in the Administering Authority, it was subject to supervision by and accountability to the United Nations. As it was essential that Trust Territories should not form part of the territory of the States entrusted with their administration, the system provided that the governments of those Territories were entitled to exact allegiance from the inhabitants, although the Administering Authority wielded full power of jurisdiction as well as of protection, internal and external, over the inhabitants. Thus the Administering Authority could not alter the status of Trust Territories

<sup>1</sup> See *International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950*, p. 128.

in any way except with the approval of the United Nations, in which the residuary sovereignty was vested.

7. The Burmese delegation was at a loss to understand what had prompted the South African Government to disregard the solemn appeals that the General Assembly had addressed to it at practically every session. While the Burmese delegation was reluctant to place the worst construction upon that Government's attitude, it would like to make its position with regard to Non-Self-Governing and Trust Territories quite clear.

8. The Burmese delegation believed that the logical issue of the basic objectives of the Trusteeship System and the ultimate destiny of all Trust Territories was complete self-government or independence. It agreed that the Trusteeship System was a bold experiment in international control in a very important sphere of human relationships and was still in its infancy, so that it should not be submitted to undue stress and strain. That did not mean, however, that the United Nations could allow it to be disregarded or could ignore the tendency of certain Administering Authorities to resent the slightest legitimate criticism of their action; nor could the United Nations tolerate a situation in which a Power, fully aware of the obligations it had assumed, persisted in invoking what it termed the "special position" of its mandated territory as a reason for making that territory part of its own territory, subject to the proposed consultation of the inhabitants. It could not, in fact, agree to the integration of South West Africa into the Union of South Africa without the clearly expressed wishes of the people.

9. The governing consideration was and must be that it was the United Nations that had established the Trusteeship System under its authority, and that the status of the Power exercising sovereignty over a dependent territory was only that of Administering Authority, whose relationship to the Trust Territory was one of service and delegation wholly incompatible with any exclusive rights of sovereignty.

10. The Burmese delegation noted that, in accepting the invitation to resume negotiations with the *Ad Hoc* Committee, the South African representative had stated that the Mandate for South West Africa had lapsed and that there was no longer any legal obligation to carry out the "sacred trust" enshrined in the Mandate, but that his Government was willing to conclude a new instrument; that owing to the demise of the League of Nations and the consequent lapse of the Mandate, the South African Government no longer had any international responsibility with regard to the administration of South West Africa but, in deference to the wishes of the United Nations, was prepared to reassume such international responsibility; and that it was prepared to conclude the new instrument with three of the former Principal Allied and Associated Powers which had transferred the Mandate to it.<sup>2</sup> The Burmese delegation would welcome such pronouncements as major concessions were it not for the fact that even the three Powers in question had recognized the international and obligatory character of the Trusteeship System and that such suggestions were tantamount to a return to the old days when administering Powers had been able to do as they chose with the territories under their administration, which could not claim the

protection now accorded to them by the United Nations Charter.

11. It was in that spirit that the Burmese delegation had united with the delegations of Brazil, Denmark, India, Pakistan, the Philippines, Syria, Thailand and Uruguay in submitting draft resolution A/C.4/L.305 and with the delegations of India, Iraq, Pakistan, the Philippines, Syria and Uruguay in submitting draft resolution A/C.4/L.306. It was confident that it would have the support of all the delegations which had joined in past efforts to induce the Union of South Africa to acknowledge and comply with its obligations to place South West Africa under the Trusteeship System.

12. Mr. KUCHKAROV (Union of Soviet Socialist Republics) said that the question of South West Africa had been before the Fourth Committee for eight years. The crux of the matter lay in the fact that the Union of South Africa, a Member State and signatory to the Charter, refused to comply with the General Assembly's recommendations.

13. In resolution 65 (I) the General Assembly had rejected the South African Government's request regarding the incorporation of the territory in the Union of South Africa and had recommended that it should be placed under the International Trusteeship System. In 1947, the South African Government had informed the United Nations that it had decided not to proceed with the incorporation of South West Africa in the Union but to maintain the *status quo*, to continue to administer the territory in the spirit of the Mandate and to submit reports on its administration for the information of the United Nations (A/334). That had been merely a manoeuvre on the part of the South African Government, as it had continued to act in contradiction to the Charter and the General Assembly resolutions and had brought the Fourth Committee and the General Assembly to an impasse.

14. Not only had the South African Government refused to place South West Africa under the Trusteeship System, but, in a letter dated 11 July 1949 (A/929), it had announced its intention of submitting no further reports, on the grounds that under the South West Africa Affairs Amendment Act the Territory had become a province of the Union. South West Africa had therefore been annexed against the will of its people and despite the provisions of Chapter XII of the Charter.

15. With reference to the advisory opinion of the International Court of Justice, he could not agree that Articles 75 and 77 of the Charter were "permissive" in nature and hence he could not accept the Court's opinion that the Charter did not impose on the Union of South Africa an obligation to place South West Africa under the Trusteeship System. In his delegation's view, the former mandated territories must either become independent or be placed under the Trusteeship System. Since the Union of South Africa was not prepared to grant South West Africa independence, it followed that the territory should be placed under trusteeship.

16. The civil disobedience movement referred to in the reports of the *Ad Hoc* Committee on South West Africa for 1952 (A/2261 and Add.1) and for 1953 (A/2475 and Add.1 and 2) showed that the indigenous inhabitants of South West Africa were against integration into the Union of South Africa. During the negotiations between the South African representative and the *Ad Hoc* Committee, extremely severe legislation, such as the Public Safety Act, had been enacted in the

<sup>2</sup> See A/AC.49/SR.381 part I.

Union of South Africa to quell any opposition to the South African authorities, including opposition from the people of South West Africa.

17. South Africa's territorial ambitions were growing daily. According to the *New York Times*, Mr. Mallan had recently made a statement setting a five-year limit for the satisfaction of his party's demand that the United Kingdom should hand over to the Union of South Africa Basutoland, Bechuanaland and Swaziland. Apparently, unless it was stopped, the Union of South Africa would soon demand that the whole African continent should be included within its territory.

18. It was clear from the 1953 report of the *Ad Hoc* Committee that the South African Government regarded the work of the *Ad Hoc* Committee on South West Africa as interference in the internal affairs of the Union. As the members of the Fourth Committee were well aware, that attitude was frequently adopted by the administering Powers when reference was made to their obligations under Chapters XI, XII and XIII of the Charter.

19. In 1952, the General Assembly had decided to postpone the South West African question until the present session (resolution 651 (VII)). In the negotiations with the *Ad Hoc* Committee that had taken place in the intervening period, the South African representative had merely repeated all his Government's earlier arguments and its previous proposal that a new instrument should be concluded with France, the United Kingdom and the United States, a proposal which had already been rejected by the *Ad Hoc* Committee. That proposal was intended to circumvent the authority of the United Nations, which alone was competent to conclude such an instrument and supervise the administration of the territory.

20. The facts to which he had just referred showed that for seven years the South African Government had consistently refused to co-operate with the United Nations on the question of South West Africa. By its arbitrary unification of South West Africa with the Union of South Africa and its refusal to place the territory under the Trusteeship System, it had failed to comply with General Assembly resolutions 65 (I), 141 (II) and 227 (III), violated the Charter—in particular Chapter XII—and undermined the International Trusteeship System.

21. Mr. BULACIA (Argentina) said that his delegation had examined the report of the *Ad Hoc* Committee on South West Africa with particular care. Although he noted with regret that no satisfactory solution to the problem had been found, he congratulated the Committee on its approach to the negotiations, which had demonstrated once more the anxiety of the United Nations to find a peaceful settlement for all problems which might directly or indirectly endanger international security, and its readiness to defend the interests of peoples who did not yet enjoy full sovereignty and self-government. He endorsed the Committee's view that only the United Nations was entitled to act in any negotiations, agreement or compact which affected the situation of territories whose peoples were not yet capable of full self-government.

22. When the present *Ad Hoc* Committee had been set up (resolution 570 B (VI)), it had been instructed under its terms of reference to continue negotiations with the Government of the Union of South Africa with a view to putting in effect the advisory opinion

of the International Court of Justice and to examine reports on the administration of the Territory of South West Africa, as well as petitions from the territory and any other related matters, keeping as far as possible to the former system under the League of Nations Mandate. The South African Government had not agreed to those terms of reference because it rejected beforehand any settlement whereby it would be responsible to the United Nations for the administration of the territory concerned. The report of the *Ad Hoc* Committee made it clear that the only negotiations which the South African Government would consider would be with the three Principal Allied and Associated Powers—France, the United Kingdom and the United States—despite its earlier statement that it did not recognize any obligation to the remaining Principal Allied and Associated Powers or to the former Members of the League of Nations. The Argentine delegation endorsed the Committee's conclusion that it could not discuss any proposal by the Government of the Union of South Africa which was not designed to put into effect the opinion of the Court, and furthermore that the United Nations must be a party in any such negotiations.

23. The opinion of the International Court of Justice had stated plainly that the responsibilities of the South African Government could not be other than its responsibilities under the Mandate and that any agreement would have to be concluded on that basis. The *Ad Hoc* Committee had agreed that it would be guided in the negotiations by the principle that the South African Government would not accept obligations in excess of its obligations under the Mandate. That Government, on the other hand, had averred that the Mandate over South West Africa had ceased entirely and that although it continued to administer the territory in the spirit of the "sacred trust" mentioned in Article 22 of the Covenant of the League of Nations, it did not, in view of the demise of the League, recognize any international commitment in that respect. Nevertheless it was willing, in order to withdraw the matter from consideration by the United Nations, to come to an arrangement with the three Powers referred to.

24. The principle that the more highly developed nations should act as guides to the backward peoples had been accepted even before the start of the Mandates System. The purpose of such guidance was agreed to be the ultimate achievement by the more backward peoples of a full place in the international community. A mandate did not mean that the Mandatory Power was entitled to annex the territory under its administration—it was made quite clear in Article 22 of the Covenant of the League that the Mandatory Powers were the League's agents.

25. It was difficult to understand why the Government of the Union of South Africa should refuse to negotiate an agreement with the United Nations, and prefer to deal instead with three of the Principal Allied and Associated Powers. Although it was true that the former German colonies which had later become the mandated territories had been handed over to those Powers, it was also those Powers that had been the principal architects of the League of Nations, from which all rights over the former German colonies derived. Most of the countries which had been Members of the League and had enjoyed equal rights and obligations within it were now Members of the United Nations. Moreover, as the representative of Pakistan

had pointed out at the 358th meeting, the membership of the League itself had fluctuated considerably during its existence. Since the purposes of the League were now being followed by the United Nations, with improvements made possible by the experience of the League, the refusal of the South African Government to recognize the right of the United Nations to represent the former Members of the League was not easy to explain.

26. If the present position of South West Africa was accepted, the present Trust Territories could look forward only to incorporation in the territories of their Administering Authorities, should the United Nations also one day cease to exist. The Argentine delegation maintained that the international community had granted the mandates for those Territories, and that it alone would be entitled to determine the fate of their peoples in such an eventuality.

27. His delegation wished to place it on record that, in making its comments, it had not been moved by any spirit of criticism, but solely by a desire to contribute to a just settlement of a problem which was of equal concern to all delegations.

*Mr. Kaisr (Czechoslovakia), Vice-Chairman, took the Chair.*

28. Mr. BOZOVIC (Yugoslavia), referring to the claim that a mandate was a "sacred trust of civilization" and that all that was required in the case in point was the revival of the international aspects of that sacred trust, pointed out that his delegation had already emphasized that the provisions of Article 22 of the Covenant and of Chapters XI, XII and XIII of the Charter were not the result simply of a benevolent attitude on the part of the administering Powers. Other factors, among which the development of the national and political consciousness of the dependent peoples was undoubtedly the most important, had played a predominant part in the choice that had been made between the classic colonial policy and the policy of non-annexation and international control of the administration of the Non-Self-Governing Territories. That fact, plus the fact that the "sacred trust" had not prevented the application of the policy practised before the founding of the League of Nations, made the argument that it had been the *raison d'être* of Article 22 of the Covenant somewhat unconvincing. The real aim of the Mandates System had been, for those who did not regard it simply as a more elaborate method of applying the old colonial policy, a recognition of the right of peoples to self-determination and a negation of the policy of annexation.

29. The results of the policy of conquest and annexation were well known. One consequence had been constant struggles to repartition overseas territories. The Second World War had been one such struggle. The Fourth Committee was also well aware of the effect of the activities of alien conquerors on the colonial peoples. Nearly all the questions which came before it involved the consequences of the attitude of the white races towards the coloured peoples, whether it was the alienation of land, discrimination or racial segregation. In that respect the position in South West Africa, which was subject to the laws and regulations of the administering Power, the discriminatory character of which was being discussed in another Committee of the General Assembly, laid a special responsibility on the Committee.

30. Since 1946 the Union of South Africa had opposed the requests of the General Assembly that South West Africa should be placed under the International Trusteeship System and had denied that the Assembly possessed any competence in the affair at all. Instead, it had associated the territory ever more closely with the rest of the Union, thus depriving it of its separate international status. The arguments of the Union of South Africa in defence of its actions merited special attention, first because they were contrary to the letter and spirit of the Charter, and secondly because the present position, taken with other important aspects of the situation in Africa, might well have the most serious consequences.

31. One of the chief arguments was that with the demise of the League of Nations, the Mandate for South West Africa had lapsed, and that with the disappearance of the other contracting party the Union of South Africa had ceased to possess international obligations or responsibilities, although it continued to administer the territory in the spirit of the Mandate. The fact that representatives of the indigenous population had not been allowed to leave the territory in order to state their desires and requests to the international community and that in practice the territory was incorporated in the Union of South Africa and subject to all its laws, including those relating to the rights of indigenous inhabitants and coloured persons in general, cast some doubt upon the latter statement.

32. The Indian representative had rightly pointed out that if the liquidation of the League was the basis for the cessation of the Union of South Africa's international obligations, it might well be considered a basis for the cessation of its rights over the territory. Moreover, the Mandate had implied, under Article 22 of the Covenant of the League of Nations and in the opinion of the International Court of Justice, certain obligations on the part of the administering Power towards the territory and its people as well as to the international community. Thus, the beneficiaries of the contract still remained, and the people of South West Africa were entitled to demand that their interests should be considered. For the sake of its own security also, the international community had a right to inspect the administration of the territory. Under the Charter of the United Nations, the international community had been reconstituted with strengthened and broadened rights and obligations. Thus the second party to the contract still existed. It could not be agreed that the international protection of territories not enjoying self-government was indissolubly linked to a special form of international organization and that with its demise, the ground that had been gained must be lost.

33. Moreover, the South African Government had accepted a limited international responsibility by stating its willingness to negotiate an agreement with three of the Principal Allied and Associated Powers, on the grounds that it had been they who had originally conferred the Mandate on South Africa. The legal basis for the action of the Principal Allied and Associated Powers had been article 119 of the Treaty of Versailles, whereby Germany had renounced all its rights and titles to its overseas possessions. The actions of the Principal Allied and Associated Powers had been limited by article 22 of the same treaty, which made the cession of the German possessions conditional on their being placed under the Mandates System and which had been adopted before the mandates were dis-

tributed among the Powers concerned; those Powers, incidentally, had had to submit reports to the League of Nations. Hence, the Principal Allied and Associated Powers had acted on behalf of the international community in the form of the League. That was clear, among other things from the report of the Council of the League of Nations to the first Assembly. The Council had stated that it had decided that in the last resort it was responsible for approving and, if necessary, drawing up the mandates and that if mandate agreements were not submitted within a reasonable time, it would be obliged to act on its own initiative.<sup>3</sup> Even supposing that the Principal Allied and Associated Powers had had certain rights over the territories in question, those rights had been superseded by the approval of the mandate agreements and by the transfer of the whole question to the competence of the international community.

34. The South African Government's contention that the Principal Allied and Associated Powers had special rights over the mandated territories implied the responsibility of those Powers for the present situation. It also implied their responsibility for the future development of South West Africa. Since the international community was the guardian of the rights and interests of the dependent peoples and since it could exercise its rights only through its representative organs—in the present case, the United Nations—it was hardly conceivable that the three Powers would seek to represent the world community in such a delicate question of such international importance.

<sup>3</sup> See *League of Nations, Records of the First Assembly, Meetings of the Committees*, Geneva 1920, Vol. 2, p. 377-378.

35. His delegation was unable to accept the South African Government's proposal for the following reasons. First, the solution of internationally important problems, particularly those directly affecting the rights and interests of one or more peoples or States, by the great Powers acting in agreement was contrary to the principles on which the United Nations was based and to the new international order embodied in the Charter. Such questions could be settled only with the participation and agreement of the peoples and States concerned. Secondly, it was inadmissible, within the framework of the United Nations, that a procedure should be adopted in the case of the Union of South Africa different from that applied to the other former Mandatory Powers. Such a step would discriminate between accepted obligations by limiting those obligations in so far as they applied to South Africa.

36. In his delegation's view, the only solution was that for which the Charter made provision: South West Africa should be placed under the International Trusteeship System in the same conditions as the other mandated territories. In that way the rights and interests of its people would be safeguarded as much as possible, the provisions of the Charter would be correctly applied and the United Nations would be protected against the introduction of a system of preferential treatment which might undermine its very foundation, namely, the equality of its Members.

37. His delegation's position on any draft resolutions and amendments that might be submitted would be determined in the light of the considerations he had just outlined.

The meeting rose at 11.55 a.m.