



C O N T E N T S

Page

Question of South West Africa: report of the <i>Ad Hoc</i> Committee on South West Africa (<i>continued</i>).....	293
---	-----

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/Rev.1 and Add.1, A/C.4/L.306 and Add.1) (*continued*)

[Item 36]*

1. Mr. PACHACHI (Iraq) regretted that the earnest endeavours of the *Ad Hoc* Committee on South West Africa to solve a problem with which the United Nations had long been occupied had not met with success. Responsibility for that failure rested with the Union of South Africa, which had persisted in its uncompromising attitude. Although the South African Government had agreed to be represented on the *Ad Hoc* Committee, it had consistently refused to act upon the advisory opinion of the International Court of Justice¹ or upon any of the many resolutions adopted by the General Assembly on the subject of South West Africa. It was difficult, therefore, to share the optimism of certain delegations as to the outcome of the discussions and as to the true intentions of that government.

2. The South African Government claimed that the demise of the League of Nations justified it in divesting itself of its international obligations under the Mandates System even though it continued to exercise the rights conferred upon it by that system. In its advisory opinion, the International Court of Justice had refuted that argument; it had also rejected the assertion of the South African Government that all international supervision should be done away with. That government admitted that it should preserve the sacred trust of civilization towards South West Africa described in Article 22 of the Covenant of the League of Nations, but denied responsibility to the United Nations for the performance of that trust. It could not be admitted, however, that the obligation to undergo supervision was removed simply by the disappearance of the supervisory body when the United Nations was another such international organ with similar supervisory functions. The existence of a "sacred trust of civilization", as described in Article 22 of the Covenant of the League of Nations, was inconceivable without international supervision.

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

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

3. It would therefore have been logical, the Iraqi delegation thought, for the Court to advise the placing of the Territory of South West Africa under trusteeship. Article 77 of the Charter expressly stipulated that the Trusteeship System should apply to territories "now held under mandate", the trusteeship agreements having no other purpose but to set forth the methods by which the system should be applied in each territory. The same conclusion could be derived from paragraph 2 of Article 80, which implied an obligation on the part of Mandatory Powers to negotiate and conclude trusteeship agreements. The fact that the International Court of Justice had decided by a majority of only two votes that the provisions of Chapter XII of the Charter did not impose upon the Union of South Africa any legal obligation to place the territory under the Trusteeship System showed how important was the attitude adopted in that matter by the delegation of Iraq.

4. The Government of the Union of South Africa had now said that it was ready to negotiate and conclude a trusteeship agreement, not with the United Nations but with the three former Principal Allied and Associated Powers. But it was illogical for the South African Government to propose the negotiation of an agreement with a group of Powers which no longer existed as a group—as the representative of the Union of South Africa had himself admitted at the 357th meeting—and at the same time to make the fact of the demise of the League of Nations the reason for no longer recognizing the international obligations contracted towards it. If the Union of South Africa was prepared to negotiate with a group which had ceased to exist, it might be asked why it had refused to undertake negotiations with the United Nations, which was in large part continuing the functions of the League of Nations. Finally, one of the three Powers mentioned by the Union of South Africa, namely, the United States, had not been a Member of the League of Nations, and at the time when the Union of South Africa had been granted a mandate in respect of the Territory of South West Africa had already rejected the Treaty of Versailles and the Covenant of the League of Nations.

5. The legal aspect of the problem should not be allowed to obscure certain other basic elements. In the first place, it was deplorable that a Member State of the United Nations should so openly and deliberately flout the authority of the Organization. The Government of the Union of South Africa was probably the government which had most frequently and seriously infringed the principles of the Charter and had most often ignored resolutions of the General Assembly; it had thus incurred the censure of the whole world and had placed its closest allies in a highly embarrassing situation. In the second place, the fate of the people of South West Africa was at stake, and it was only the United Nations which, by exercising international supervision over the territory, could protect those people

against the policy of oppression and exploitation to which the South African Government was subjecting them. The Trusteeship System offered the only way out for the indigenous population of South West Africa from the hatred, violence, racial discrimination and degrading servitude to which the indigenous population of the Union of South Africa was being subjected. The only argument the South African Government had been able to bring forward in its own defence had been that the question of the treatment of the indigenous people of the Union of South Africa was not within the competence of the United Nations but was a matter of the domestic affairs of the State.

6. Certain delegations, while fully sharing the opinion he had just expressed, wondered whether, in view of the fact that the Union of South Africa occupied the Territory of South West Africa and that no General Assembly resolution could alter that situation, the United Nations should not adopt a more realistic policy by accepting the *fait accompli* and contenting itself with the few concessions granted by the South African Government. That was a solution which the Iraqi delegation could not accept, because it would mean sacrificing the noble principles of the Charter to individual interests. The Organization owed it to itself and to the whole world to defend those principles and not to condone a *de facto* situation which was morally inadmissible.

7. Mr. RIFAI (Syria) observed that the complexity of the question of South West Africa derived, not from the nature of the question itself, but from the attendant circumstances; a modification of those circumstances would induce a rapid solution of the problem.

8. He wondered whether the attitude of the Government of the Union of South Africa, which could not be justified on any legal, moral or practical grounds, was not explained by psychological reasons. The people and Government of the Union of South Africa were perhaps afraid—and unhappily the statements of certain delegations could but give substance to their fears—that the interest taken by the United Nations in the Territory of South West Africa concealed certain doubtful intentions. It could then be understood why the Union was ready to negotiate only with the three Principal Allied and Associated Powers and refused to take what seemed to be the logical and normal course, namely to recognize the competence of the United Nations in the matter of the international supervision of the territory. He urgently appealed to the representative of the Union of South Africa to renounce that attitude of mistrust and to seek, together with the Committee and with the assistance of the administering Powers, whose silence on the question of South West Africa was eloquent, a solution acceptable to all.

9. Turning to the juridical, moral and practical aspects of the problem, he said that it was perhaps difficult to reconcile those different elements, but that none the less a degree of balance between them was essential for international harmony, as was shown by the very existence of the United Nations. If agreement could not be reached on the strictly juridical level, other considerations might make it possible to find a way out of the deadlock.

10. The Syrian delegation had always considered that Articles 77, 79 and 80 of the Charter imposed a legal obligation on the Government of the Union of South Africa to place the Territory of South West Africa

under the Trusteeship System; it had therefore voted for all resolutions in which the General Assembly had invited that Government to negotiate a trusteeship agreement with the United Nations.²

11. The South African representative had stated (269th plenary meeting), in connexion with General Assembly resolution 338 (IV) requesting the advisory opinion of the International Court of Justice, that his Government had a deep sense of its obligations towards the international community. The South African Government had always affirmed that the dissolution of the League of Nations in no way diminished that government's obligations under the Mandate, which it would continue to discharge with a full and proper appreciation of its responsibilities until such time as other arrangements had been agreed upon concerning the future status of the Territory of South West Africa. Moreover, Field Marshal Smuts, in his speech before the Fourth Committee at its 14th meeting, during the second part of the first session of the Assembly, had stated that the Union Government had not wished to take advantage of the war situation to change the status of South West Africa without consultation with the peoples of the territory and the competent international organs. Lastly, when the General Assembly had voted, on 14 December 1946 (resolution 65 (I)), against the incorporation of South West Africa in the Union of South Africa, the South African Government had agreed to maintain the *status quo* of the territory and to continue its administration in the spirit of the Mandate. It could be safely concluded from all those facts that even before the International Court of Justice had delivered its opinion, the South African Government had already acknowledged that the dissolution of the League of Nations in no way released it from the obligation to continue the sacred trust of civilization it had assumed, that the peoples of the territory should be consulted before any change in the status of the territory, and that a competent international organ would have to agree to such a change.

12. The South African Government had refused to agree to the placing of South West Africa under trusteeship. That refusal had brought the negotiations to a deadlock, from which the International Court of Justice had not succeeded in freeing them. The Government of the Union of South Africa had refused to accept the opinion of the Court *in toto* and continued to argue that it was under no legal obligation to accept international supervision by the United Nations. The International Court of Justice, however, had inherited the compulsory jurisdiction in matters of judicial supervision conferred on the Permanent Court of International Justice by article 7 of the Mandate: the South African Government was therefore not justified in refusing the jurisdiction of the International Court.

13. In those circumstances the General Assembly had decided, in resolution 449 A (V), to establish an *Ad Hoc* Committee on South West Africa, to which it had assigned the duty of conferring with the Government of the Union of South Africa concerning means of implementing the Court's advisory opinion. He paid a tribute to the Committee on the manner in which the negotiations had been conducted; he hoped that the Committee would succeed in finding common ground for agreement in spite of the existing difficulties. The South African representative had ascribed the *Ad Hoc*

² Resolutions 65 (I), 141 (II), 227 (III), 337 (IV), 449 B (V) and 570 B (VI).

Committee's failure in part to the restrictive nature of its terms of reference. It was obvious, however, that the General Assembly could not have authorized the *Ad Hoc* Committee to accept only part of the advisory opinion of the International Court of Justice. The negotiations had not led to any important result but they should nevertheless be continued, for the slight concession made by the South African Government was an encouraging sign for the future. The real difficulty confronting the *Ad Hoc* Committee lay in the selection of the party which would exercise international supervision. The Court had stated that the supervisory functions rested solely with the United Nations, whereas the Union of South Africa was not prepared to grant them to anyone other than the three Principal Allied and Associated Powers. The Union appeared to believe that it would thereby avoid the criticism it might receive from the United Nations; but that attitude scarcely befitted a Member of the United Nations, especially as it had always been understood that the United Nations did not intend to impose on the Union of South Africa obligations more onerous than those embodied in the League of Nations Mandate. It was therefore difficult to understand what advantages that government hoped to secure by rejecting the Court's advisory opinion on that point.

14. The problem of South West Africa was not solely a legal one; it had a moral aspect. The Mandates System rested on the humanitarian and moral conception of the free development of the dependent peoples under the supervision of the international community. It would be wrong to relegate the fate of the peoples of the Territory of South West Africa to the background while engaging in legal quibbles. As the Indian representative had properly pointed out at the 359th meeting, humanitarian problems calling for a most urgent solution existed in the territory. The United Nations should therefore continue its efforts to solve the question of South West Africa.

15. Mr. RODRIGUEZ FABREGAT (Uruguay) regretted that the problem of South West Africa had not yet been solved and was still on the General Assembly agenda. The discussions on that problem would be tedious if the lofty principles of justice of which the United Nations was the guardian were not at stake. The Committee now had new evidence before it: the last report of the *Ad Hoc* Committee on South West Africa (A/2475 and Add. 1 and 2). That document was as discouraging as the first reports (A/1901 and Add. 1 to 3, A/2661 and Add. 1), and the solution of the problem appeared to be as remote as when the Committee had been set up. It was proper to acknowledge, however, that a prospect of agreement was discernible which related, however, much more to the form than to the substance of the question. The General Assembly was therefore still faced with the same responsibility, which it could not elude without violating a sacred principle that had been deeply graven in the conscience of humanity, especially since the San Francisco Conference.

16. The *Ad Hoc* Committee's latest report showed that its work had been slow, though that slowness could not be laid at the door either of the Committee as a body or of its individual members; for example, the reply to the proposal of 27 January 1953 made to the South African Government by the Chairman of the *Ad Hoc* Committee had not reached the *Ad Hoc* Committee until June. The *Ad Hoc* Committee's

report had been drafted in September. That document, as the Liberian representative had rightly said at the previous meeting, was not the chronicle of the failure of a United Nations organ; rather did it bear witness to the fact that the South African Government had always adopted an attitude incompatible with the spirit of the General Assembly resolutions, the Charter, the Universal Declaration of Human Rights, and the advisory opinion of the International Court of Justice. As in the case of the *apartheid* legislation and the treatment of persons of Indian origin in the Union of South Africa, the South African Government had arrogated the right to reject the General Assembly resolutions and the advisory opinion of the Court, particularly in fields in which such a refusal was tantamount to the negation of mankind's noblest aims, which the triumph of democracy after a relentless war had made it possible to embody in the Charter.

17. He proposed to examine the history of the problem of South West Africa in order to show what conclusions could be drawn from it.

18. On 17 December 1920, the League of Nations, pursuant to Article 22 of its Covenant, had placed the Territory of South West Africa, a former German colony, under international mandate and had assigned the exercise of that Mandate to the Government of the Union of South Africa. The League of Nations had not, by that decision, withdrawn a colonial territory from one master to give it to another. The Territory of South West Africa was no longer a colony, merely passing from the conquered to the conqueror in accordance with the old established practices. The League of Nations Mandates System had a precise meaning and could be traced to the ideas of Francisco de Vitoria. The mandated territories could no longer be left to be exploited by a new lord and master. The Territory of South West Africa had been entrusted to the government of a country that had fought for the victory of democracy and was a Member of the League of Nations in order that the people of that territory might gradually attain a full measure of self-government.

19. But after the progress achieved with the institution of the Mandates System, a new phenomenon called nazism had appeared in the world, marked by aggression, massacres, segregation, imprisonment and persecution committed in the name of the monstrous principle of the existence of a so-called superior race which held in contempt all other races and cultures of the world. Nazism had been arrested only by the joint action of all the peoples who believed in human dignity, and by the death of 20 million victims of its atrocities, who had shown the way, by their heroism in the cause of freedom, to representatives of all the democratic peoples who had gone to San Francisco to draw up the United Nations Charter. That Charter had become the new law of the world.

20. Economic factors and social conditions had been dealt with for the first time in an instrument of that kind. A similar development had taken place in regard to the former League of Nations Mandates System, under which South West Africa had been entrusted to the South African Government; that system, in its new form, had become the Trusteeship System as defined in Chapters XII and XIII of the Charter. Owing however to the opposition of the Government of the Union of South Africa, the Territory of South West Africa had not been brought under the new system. The Gov-

ernment of the Union of South Africa did not appear to agree that the profound change in moral values embodied in the Charter would apply to that portion of mankind which had been entrusted to its wisdom and justice. The Territory of South West Africa would therefore have lost its character as a mandated territory if the General Assembly had not vigilantly defended the principles of the Charter.

21. It had been said that, according to the Government of the Union of South Africa, 90 per cent of the white population of the Territory of South West Africa was in favour of neither the Mandate, nor the Trusteeship System, nor the supervision of the United Nations, but of the solution best suited to its interests. But nine-tenths of the population of the territory was made up of persons who, under the discriminatory laws of the Union of South Africa, were called "coloured," and were not allowed access to the places where citizens were represented; the Union had adopted those measures of racial segregation in violation of the Charter and contrary to the efforts being made by the General Assembly to defend human rights.

22. Faced with the resistance of the Union of South Africa, the General Assembly had set its moral forces in motion; it had consulted the International Court of Justice, which had declared 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 that international status rested with the Union of South Africa acting with the consent of the United Nations. The Court had also stated 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 as well as the obligation to transmit petitions from the inhabitants of that territory. By "petition" was meant any demand, complaint, denunciation or accusation made by any inhabitant of that territory, for whom the Charter had provided one competent defender, namely, the United Nations.

23. The Government of the Union of South Africa, however, had once again refused. The General Assembly had then set up an *Ad Hoc* Committee to consider the question. According to the report of that Committee (A/1901 and Add. 1 to 3), the Government of the Union of South Africa had argued that the Mandate for South West Africa had lapsed, and that while it continued to administer the territory in accordance with the mission which it had accepted originally, in view of the demise of the League of Nations, it had no other international commitments. The Government of the Union of South Africa had then proposed, in order to give some form to what it considered its exclusive right over the Territory of South West Africa and its population, a solution which consisted in reviving the former Permanent Mandates Commission of the League of Nations and in selecting three Powers with which it would negotiate. Moreover, the Government of the Union of South Africa had stated that the idea of an agreement with those three Powers was at the basis of all its proposals. From the beginning, the delegation of the Union of South Africa had expressly asked the Committee to make its attitude clear with regard to the proposal. The Chairman had replied that the Committee had to urge the implementation of the advisory opinion ex-

pressed by the International Court of Justice, as the General Assembly had asked in its resolution 449 A (V).

24. There was yet another aspect to the question: it seemed that, in its attempt to take a step backward in the field of international law, the Government of the Union of South Africa was contemplating the revival of the veto system followed in the League of Nations and in the Permanent Mandates Commission, under which each of the Members of the League of Nations had the right of veto. It was that concept that had led the Government of the Union of South Africa to say that since the opinion of the International Court of Justice was a purely advisory one, it did not accept it. In view of all that had been said about the right of veto and the excessive development of that right in the Security Council, it was hardly necessary to dwell on the attitude of the Union of South Africa in that respect.

25. It might be wondered whether the principles of the Mandates System or the principles of the Trusteeship System were being respected when the government of a mandatory country claimed that there was no basis for any supervision by the United Nations.

26. A delicate question, but one which the signatories to the San Francisco Charter had the right to put in view of the international obligations they had assumed, was whether the laws and administration of the Union of South Africa promoted the progress of the population of South West Africa towards self-government. The administering Power should at least tell the General Assembly what steps it was taking to promote the development of the population of the territory. In the absence of any information from the administering Power, it was impossible not to feel some anxiety. Indeed it was known that under the Group Areas Act, racial segregation, the system of reserves, and restrictions imposed on men because of the colour of their skin were enforced throughout the territory of the Union. Thus, according to the provisions of that law, any woman who married or had relations with a coloured man was stated to belong to a coloured race. Any protest against the racial laws was an offence which was severely punished. In those circumstances it was easy to imagine the fate of the unfortunate authors of any petition addressed to the United Nations. Such a law was unjustifiable under the Charter.

27. In examining that problem, he was concerned about the fate of a population which was entitled to the respect due its inherent human dignity and he wondered whether the United Nations could entrust to a government the sacred mission of trusteeship over a people when that people could be subjected to laws of the kind he had just mentioned. The principle of domestic jurisdiction should not be used as an argument for it was the duty of the United Nations to defend the populations of the Non-Self-Governing Territories and an injury done to one people was an injury to all mankind. The United Nations could not abandon a people whose fate had already been entrusted to the international community by virtue of the League of Nations Mandate.

28. He asked the delegation of the Union of South Africa to understand his anxiety as a citizen of a country where democratic institutions functioned without restrictions and where merit and virtue were the only considerations that counted. His anxiety was due to the following facts. The Charter had established a Trustee-

ship System which should apply to all mandated territories, but the Union of South Africa denied that. The Charter had abolished racial discrimination, but the Union of South Africa had established new discriminations. The General Assembly had adopted resolutions on South West Africa, but the Union of South Africa took no account of them. The General Assembly had asked the International Court of Justice for its advisory opinion, but the Union of South Africa did not accept that opinion. Lastly, the General Assembly had set up an *ad hoc* committee to study the question of South West Africa, but the Union of South Africa claimed that the General Assembly had no competence in the matter.

29. Nevertheless the Uruguayan delegation wished to preserve some hope. It would not wish to pay any attention to the utterances of certain persons who said that the populations concerned might find themselves in a situation similar to that of the half-caste populations of Latin America, nor to certain Press articles which did not hesitate to speak of the threat represented by the United Nations.

30. The Uruguayan delegation considered that the General Assembly should do its duty. It had, accordingly, jointly with other delegations, submitted two draft resolutions, contained in documents A/C.4/L.305/Rev.1 and Add. 1 and A/C.4/L.306 and Add. 1. It hoped that those drafts, which sought a fair solution and wished to avoid any confusion with the former solutions, would be adopted, and that the population of South West Africa would be able to move forward towards the future it deserved.

31. Mr. ABOU KHADRA (Saudi Arabia) recalled the part played by Field Marshal Smuts in the establishment of the Mandates System, a system which had left painful memories in the countries of the Middle East. Under that system the Middle East had been parcelled off in a manner that suited the Principal Allied and Associated Powers, and various governments had come into being solely because they conformed to the governmental structure of the Mandatory Power. That system had also been responsible for the loss of an important part of the Middle East to an alien movement that had brought with it nothing but misery and suffering for the lawful inhabitants of that area. Saudi Arabia did not indict the whole Mandates System, which had been conceived in a spirit of harmony and conciliation to give effect to the theory of international responsibility; but it nevertheless entertained certain misgivings as far as the system was concerned because the Mandatory Powers had in some instances abused it to further their own interests. It was in the light of those facts that he approached the question of South West Africa.

32. Mandated territories had had before them three alternatives of development: they could be led towards independence, as had occurred in certain instances, incorporated in the mandatory country, or placed under the Trusteeship System created by the Charter. It had been clear from the outset that the Union of South Africa had been bent on incorporating South West Africa. After the First World War the Government of the Union of South Africa had made a request to that effect, which had, however, proved unacceptable to the Principal Allied and Associated Powers. South West Africa had then been placed under the mandate of the South African Government. On the demise of the League of Nations, the South African Government, unlike all

the other Mandatory Powers, had failed to give South West Africa its independence or to place it under trusteeship, and it had once again served notice of its desire to incorporate the territory. The United Nations had decided against the request and had considered that South West Africa should be placed under trusteeship. The United Nations had declared itself in favour of international supervision, and its opinion had been confirmed by the advisory opinion of the International Court of Justice, which the General Assembly had accepted in resolution 449 A (V); an *ad hoc* committee had then been set up to conduct the necessary negotiations.

33. The members of the *Ad Hoc* Committee and the delegation of the Union of South Africa were to be praised for the friendly and harmonious spirit in which the negotiations had been conducted. It was heartening to note that agreement had been reached on certain points and that the Union of South Africa was prepared to accept the idea of a sacred trust, the negotiation of a new instrument, and the establishment of some kind of supervision provided that it did not exceed the obligations existing under the League of Nations Mandate. The Saudi Arabian delegation believed that the new instrument should be negotiated through an international body such as the United Nations. It would be possible to achieve a wider range of agreement if the Union of South Africa was prepared to enter into negotiations with the three former Principal Allied and Associated Powers in their capacity as agents and not principals. The instrument resulting from such negotiations would later be subjected to the approval of the United Nations.

34. There was no foundation for the South African Government's argument that it could not place South West Africa under the authority of the United Nations because the composition of the United Nations was different from that of the League of Nations. It was prepared to negotiate with a group of Powers the composition of which had also changed, since there had originally been five Principal Allied and Associated Powers. The membership of such bodies was bound to vary in accordance with changing situations. With regard to the principle of unanimity, the situation was indeed different from that which had existed at the time of the League of Nations. The International Court of Justice had acknowledged that in its advisory opinion, the provisions of which he recalled, the Saudi Arabian delegation believed that the advisory opinion rendered by the International Court should, by virtue of article 7 of the South West Africa Mandate, be accepted as compulsory. If the obligations assumed by the Union of South Africa under the Mandate had lapsed with the demise of the League of Nations, then the rights and privileges conferred on the Union of South Africa Mandate had also ceased to exist. If it was found that the Mandate was still valid, the Government of the Union of South Africa was bound to conform to the requirements of the Mandate. It was clear that the Union of South Africa did not possess the competence alone to alter the status of a territory without consulting and securing the approval of the United Nations. Such had been the case in many other territories the mandate of which had been terminated only after due acceptance by the United Nations. Nevertheless, the Government of the Union of South Africa had decided to incorporate South West Africa in the Union and had promulgated an act to that effect. The ter-

ritory had become a province of the Union; the six members that it elected to the Parliament represented only the white population, and the coloured population, which was much more numerous, was represented only in the Senate by a member who must be a European and who was appointed by the South African Government.

35. It was regrettable that the South African Government had failed to submit reports and transmit petitions relating to South West Africa in consonance with its international responsibility and the opinion of the International Court of Justice. If it accepted the idea of the sacred trust, it should discharge the duties that it had accepted under the Mandate to enable an international body to ascertain the facts of the situation. It was also regrettable that that government had not accepted the *Ad Hoc* Committee's counter-proposal (A/1901, para. 27), the principal points of which he reviewed. It was to be hoped that that proposal, which had been advanced in the spirit of the advisory opinion of the Court, could form a basis for further negotiations. He also drew attention to the fact that the policy of racial discrimination, which was against the interests and welfare of the inhabitants of South West Africa and a violation of the principle of the sacred trust and international accountability, had contributed greatly to the deterioration of the situation in South West Africa. World public opinion had become most unfavourable to the South African Government. He urged that government to put an end to such discriminatory practices.

36. The Saudi Arabian delegation hoped that it would be possible to negotiate a new international instrument between the United Nations and the Union of South Africa that would give effect to the opinion of the Court. That was why it had joined in sponsoring the draft resolution contained in document A/C.4/L.306 and Add.1. If the problem was to be resolved in the manner proposed in that resolution, the United Nations and the Union of South Africa should enter into further negotiations in a more constructive spirit of co-operation. It was for that reason that the Saudi Arabian delegation had also joined in sponsoring the draft resolution contained in document A/C.4/L.305/Rev.1 and Add.1.

37. Mrs. BOLTON (United States of America) regretted that, despite the efforts of the *Ad Hoc* Committee, there had been so little progress towards negotiating an agreement between the United Nations and the Union of South Africa and that, despite the willingness of the Government of the Union of South Africa to continue negotiations, that government had not found it possible to meet the Committee's wishes. It was to be hoped that the South African Government would re-examine the question to see if it could not find a means of accommodating itself to the advisory opinion of the Court. The United States delegation continued to believe that the best solution was to implement the opinion of the Court, which had reaffirmed the international obligations that were still binding on the Union of South Africa.

38. The principal provisions of draft resolution A/C.4/L.305/Rev.1 and Add.1 were reasonable proposals which were worthy of the support of the Committee. They provided for a committee on South West Africa to carry on the functions formerly performed by the Permanent Mandates Commission, thereby giving effect to the opinion of the Court. It was expected, of course, that the Committee would carry out its task, to the

fullest possible extent, in conformity with the procedure of the Mandates System. The United States delegation would vote for that draft resolution. It also agreed with the statement contained in operative paragraph 2 of the other draft resolution before the Committee, since it took the Court's opinion fully into account. Consequently, it would vote for that draft resolution although it doubted that the General Assembly would increase either its stature or its effectiveness by reiterating a view that it had already expressed in several resolutions.

39. Mr. ABOU-AFIA (Egypt) noted with satisfaction the South African Government's desire to reach a solution of the problem in a spirit of co-operation. It was gratifying that the negotiations in the *Ad Hoc* Committee had led to some results, for which both the members of the Committee and the South African delegation deserved congratulations.

40. From the South African representative's declaration, two positive factors emerged on which final agreement seemed to have been reached. It was conceded that South West Africa was a mandated territory with an international status, which implied that the Union of South Africa was not competent to introduce arbitrary modifications to that status. Secondly, the need for concluding a new instrument concerning that territory was not at issue. Since that common ground had been found the Union Government might be able to reconsider its previous position on the two matters where its viewpoint was still at variance with that of the General Assembly, namely, the issue of international supervision over the administration of the territory, and the identity of the second party to the new instrument which the Union of South Africa was bound to conclude on the subject of South West Africa. In that connexion, he conceded to the South African representative that there could be no agreement without reciprocal concessions. Nevertheless, the General Assembly had already made its greatest concession by seeking the opinion of the International Court of Justice. Furthermore, the Court had by its opinion specified the concessions which each party could make, and the United Nations was bound by the legal limits expressly set by the Court. The Court's opinion, though only advisory, specified certain rights and obligations which the United Nations could not disclaim or discard without betraying its mission, and placed the South African Government under a moral obligation, since it was by respecting the Court's decisions that States evidenced their devotion to the cause of justice and world peace.

41. Turning to the argument advanced by the Union of South Africa in regard to international supervision, he considered that that Government was not justified in alleging that its obligations had lapsed upon the demise of the League of Nations, since, as the Court had stressed, the authority exercised by the South African Government over the territory resulted from the Mandate. If the Mandate had ceased to exist, the South African Government's authority would likewise have ceased to exist. It was inconceivable for the rights derived from a mandate to be preserved while the corresponding obligations were disclaimed. Furthermore, though it was true that the supervisory functions of the League of Nations had terminated upon its dissolution, the fact remained that at its last session the League of Nations had recorded that the provisions corresponding to Article 22 of the Covenant had been incorporated into the United Nations Charter, and it had called upon the Mandatory Powers to continue the administration

of the mandated territories in accordance with the obligations that the mandates had imposed upon them, until such time as those Powers and the United Nations might, by common consent, decide otherwise.³

42. That resolution of the League of Nations had to be interpreted in the light of Article 77 of the Charter, which provided that the Trusteeship System should apply to such territories held under mandate as might be placed thereunder by means of trusteeship agreements, and Article 80 which stipulated that except as might be agreed upon in individual trusteeship agreements made under Articles 77, 79 and 81, nothing in Chapter XII should be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations might respectively be parties. The latter provision could not, however, be pleaded as grounds for delaying the conclusion of any trusteeship agreement. Bearing in mind that the United Nations had inherited the powers and the sacred trust of civilization formerly vested in the League of Nations for the benefit of the peoples of the mandated territories, it could not be denied the right of supervising the administration of South West Africa, the international status of which, established in 1920, had not been modified by any recognized international instrument. Consequently, the power and the duty to exercise that supervision were now vested in the organs whose functions bore the closest resemblance to those of the League of Nations Council and the Permanent Mandates Commission, namely the General Assembly and the Trusteeship Council.

43. The South African proposal to the effect that such supervision should be exercised by the three remaining Principal Allied and Associated Powers could not be justified even on historical grounds. Indeed the three Powers could not be entrusted with supervision in their capacity as former members of the group of Principal Allied and Associated Powers, since that group had not the power of supervision which had been vested in the League of Nations. Nor could they be entrusted with those duties as former Members of the League of Nations, since one of them had never been a member. Moreover, the International Court of Justice had resolved the problem of supervision in a manner which safeguarded the incontestable right to international supervision vested in the United Nations, without imposing any additional obligations on the South African Government. In holding that the United Nations had the right to exercise international supervision, the Court had decided that the Organization was the party with which the South African Government had to conclude the new instrument regarding South West Africa. The South African representative had himself admitted that his Government's proposal to the effect that the new instrument should be concluded with the three former Principal Allied and Associated Powers was based on historical rather than legal grounds. Those historical grounds had already been refuted. It remained to be said, however, that if the Union of South Africa based its case on grounds of that nature, it should concede to the United Nations the prerogatives formerly vested in the League of Nations, since the Organization had inherited from the League its principal characteristics and objectives. In that respect the South African argument was contradictory.

³ See *League of Nations, Official Journal, Special Supplement No. 194*, p. 58.

44. In concluding, he wished to express the hope of the Egyptian delegation that the South African Government would see its way clear to abide by the Court's opinion, which provided for a solution that was both legal and rational. It was in that spirit that the Egyptian delegation had joined in the preparation of the draft resolution submitted to the Committee.

45. Mr. KHOMAN (Thailand) stressed that the wish of his delegation was to see a swift and satisfactory solution of the problem. He hoped that the Court's opinion would be fully implemented, and the rights and principles of the United Nations safeguarded. It had, however, to be borne in mind that the Organization was dealing with a sovereign State, and that the means at its disposal were consequently limited to certain legal and moral arguments and to the persuasive force of public opinion. The need for patience could not, therefore, be stressed too strongly. He hoped that the Organization's view would gradually prevail.

46. Turning to the positions adopted by the United Nations and the Union of South Africa respectively, he recalled that the United Nations had inherited not only the powers of the League of Nations but also the obligations which that body had undertaken, including the obligation in regard to South West Africa, a mandated territory subject to the competence and supervision of the League. The Union of South Africa was the only Mandatory Power which had not recognized that change of authority. If it continued to administer South West Africa in the spirit of the sacred trust, it did so purely of its own free will, since it held that the demise of the League of Nations had determined the obligations which it had agreed to discharge, and that it was not bound to account to the United Nations since the Organization's composition and functions were not the same as those of the League. The Union of South Africa particularly demurred to the majority rule, and supported the unanimity rule which had applied under the Mandate. The United Nations considered that argument untenable, and had sought the advisory opinion of the Court in order to clarify the matter once and for all.

47. An important fact which emerged from the study of the question was that although the Union of South Africa had announced its intention to incorporate South West Africa in its territory, it had not acted on that intention without consulting the United Nations. It was difficult to understand why the South African Government had deemed it advisable to consult the United Nations if, as it averred, that body had not automatically inherited the powers and functions of the League of Nations in regard to South West Africa. The fact that it had decided to consult the Organization amounted to a tacit acceptance of that body's responsibilities and competence in relation to South West Africa. Furthermore, the fact that the Court had not specified the second party to the new agreement did not in any way authorize the South African Government to dispute the authority of the United Nations, since no other international body could assume responsibilities towards South West Africa. The South African hypothesis that the new instrument should be concluded with three of the former Principal Allied and Associated powers was patently devoid of substance. For if the South African Government claimed that its previously agreed obligations had lapsed upon the dissolution of the League of Nations, it could hardly allege, at the same time, that certain Powers remained competent to assume

responsibility in their capacity as former Members of the League.

48. He hoped that the South African Government would recognize that, in regard to South West Africa, the United Nations alone had international competence and could exercise the functions of supervision. The principle of supervision by the United Nations was the core of the problem, and no compromise solution which departed from that basic principle could be satisfactory, either to the United Nations or to the population of

South West Africa. Those considerations had induced the Thai delegation to join in the formulation of the draft resolution in document A/C.4/L.305/Rev.1 and Add.1.

49. He wished, in conclusion, to thank the members of the Committee for the tribute they had paid to the work of the *Ad Hoc* Committee.

The meeting rose at 6 p.m.