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Chairman: Mr. Frederick H. BOLAND (Ireland).

AGENDA ITEM 39

Question of South West Africa:

(a) Report of the Good Offices Committee on South West Africa (A/3900)

OPENING STATEMENTS

At the invitation of the Chairman, Sir Charles Arden-Clarke, Chairman of the Good Offices Committee on South West Africa, took a place at the Committee table.

1. Sir Charles ARDEN-CLARKE, Chairman of the Good Offices Committee on South West Africa, introduced the Committee's report (A/3900), which it had unanimously adopted.
2. The Good Offices Committee, established under General Assembly resolution 1143 (XII), had begun by holding a series of preliminary meetings in London to determine what practical meaning it should give to its terms of reference. The guiding principles on which the members of the Committee had agreed were set forth in paragraph 14 of the report. It had been understood by the members of the Committee that the international authority to which the Union Government would be accountable for its administration of South West Africa would be the United Nations, exercising its competence through whatever agency could most appropriately be chosen for the purpose.
3. After considering various possibilities, the Committee had proposed two alternatives to the Union Government: a trusteeship agreement or the establishment of arrangements which would reproduce within the United Nations those existing under the Mandates System of the League of Nations, subject to suitable adaptation.
4. The Committee had been fully aware that from the point of view of the General Assembly a trusteeship agreement would be the most acceptable solution. Nevertheless, in view of the Union Government's attitude towards that solution, it had taken the view that a more promising initial approach in its discussions

with the Union Government would be to seek a form of agreement based on the Mandates System. The Committee had accordingly considered in detail alternative measures of adapting the Mandates System to the framework of the United Nations in such a way as to ensure an effective system of supervision while offering the Union Government arrangements which would not impose on it obligations greater than those it had assumed under the League of Nations. Details of the kind of arrangements envisaged by the Committee were set out in paragraphs 17 to 21 of the report.

5. Part C of the report recorded the manner in which the Committee had put to the Union Government the principles it had formulated and the arrangements by which it felt that those principles could be implemented. It would be seen that a measure of agreement had begun to appear, but that measure of agreement had lost its significance when the Committee and the Union Government had come to discuss the identity of the international authority which would be involved. As explained in part C of the Committee's report the Union Government had not found it possible to accept the United Nations as a second party to the agreement or to accept any commitment making it responsible to the United Nations for the administration of the Territory. The Union Government had proposed that an agreement should be concluded not with the United Nations but with what it termed the three remaining Allied and Associated Powers, or in other words France, the United Kingdom and the United States of America. As explained in paragraph 33 of the report, the Union Government had been willing to accept a provision specifying that South West Africa possessed "an international character" rather than "an international status".

6. The agreement would also include the "sacred trust" provisions of the Mandate, subject to the modification of the military and defence provisions and to the understanding that the obligations thus accepted would be interpreted in the manner in which they had been interpreted at the time the Mandate had been granted to the Union.

7. The Union Government had been prepared to make information available to the three Powers by supplying them with all the official documents concerning South West Africa laid before the Union Government and the Legislative Assembly of the Territory, the records of relevant parliamentary proceedings and other publications. In the Union Government's view that information would be sufficient to give the three Powers a reliable picture of conditions in the Territory.

8. The Good Offices Committee had informed the Union Government that it did not feel in a position to recommend that proposal to the General Assembly, which had by its resolution 749 A (VIII), already rejected a similar proposal in 1953, but that it would

bring it to the attention of the General Assembly for its consideration.

9. The Committee had no recommendation to make regarding the proposal and submitted it without comment to the consideration of the General Assembly. He drew attention to paragraph 43 of the report, which set forth the reasons why the Union Government felt that the General Assembly should consider the proposal on its merits.

10. The Committee had discussed other possibilities with the Union Government and had come to the conclusion that some form of partition of the Territory might provide an alternative basis for an agreement. In the past the idea had been mooted from time to time that the Territory might be partitioned in such a way as to ensure that the majority of the African, or so-called non-European, population at least could be brought within the International Trusteeship System. During the preliminary talks in London the Committee had discussed the idea of partitioning the Territory in such a way that the northern portion, which contained the majority of the non-European population, would be placed under trusteeship, while the rest of the Territory would be either administered under some other form of United Nations supervision or annexed by the Union of South Africa. The Committee's conclusions on the subject were outlined in paragraph 24 of the report.

11. The Union Government had expressed interest in the possibilities of partition in so far as it felt that the idea should not be discarded without further discussion if a basis of agreement could not be found in the proposal it had already made. Discussion of the idea of partition had then ensued, as described in paragraphs 49 to 51 of the report. Both sides had agreed that before pronouncements on the merits and demerits of such a suggestion could be made by any of the parties concerned, detailed proposals would have to be put forth by the Union which could be framed only after the competent Union authorities had completed a thorough investigation.

12. While aware that such a proposal might be regarded as constituting a departure from its terms of reference, the Committee deemed it its duty to bring it to the attention of the General Assembly and to recommend it for further study and investigation. Such a proposal, if put into practice, might mean that the great majority of the so-called non-European population of the Territory could be brought within the International Trusteeship System.

13. It must be understood that there was for the time being no actual proposal for partition. There was only a proposal that the feasibility of partition should be investigated, in the hope that from that investigation would emerge specific proposals which would provide the basis for an agreement between the United Nations and the Union of South Africa. The Union Government had indicated to the Good Offices Committee that it would be willing to make such an investigation, but only if it were encouraged to do so by the General Assembly. If the General Assembly were willing to consider partition as a possible basis for an agreement, it was the understanding of the Good Offices Committee that the Union Government would immediately begin an investigation into the practicability of partition with a view to advising the General Assembly of the results at the earliest possible date, which

might be expected to be not later than the fourteenth session of the General Assembly. It would then either inform the General Assembly that its investigation had proved partition to be impracticable or alternatively would lay before the General Assembly precise proposals for the partitioning of the Territory. At that stage the further steps to be undertaken by the Union Government and the United Nations could be given full consideration.

14. The Good Offices Committee had felt able to support the suggestion of partition in principle provided that such a plan would bring the majority of the non-European population under the protection of the International Trusteeship System. It therefore hoped that the General Assembly would encourage the Union Government to investigate the possibility of partition and to submit to the United Nations for consideration proposals for the partitioning of the Territory, if the investigation proved partition to be feasible.

15. The reasons why the Union Government was able to consider a proposal involving trusteeship for a part of the Territory, although unable to accept any other form of supervision by the United Nations over the Territory as a whole, were set out in paragraph 50 of the report.

16. To sum up, the Committee's report contained two proposals for the consideration of the General Assembly: the proposal by the Union Government for the conclusion of an agreement with the three remaining Allied and Associated Powers, which the Committee submitted to the General Assembly without comment or recommendation, and the proposal put forward by the Committee itself that the General Assembly should encourage the Government of the Union of South Africa to carry out an investigation of the practicability of partition and advise the United Nations of the result.

17. Mr. LOUW (Union of South Africa) said that he would not for the time being reply to any of the points raised by the Chairman of the Good Offices Committee. As in the statements he had made during the procedural debate, he would try to conform to the spirit of the new approach initiated at the twelfth session by certain delegations and approved by a very large majority of the Fourth Committee. During the procedural debate some delegations had shown a tendency to speak somewhat disparagingly of the idea of a new approach. The South African delegation, however, welcomed that idea, which it felt might well be applied not only to the question of South West Africa but also to other issues facing the General Assembly.

18. He had listened with great interest to the clear, factual and impartial statement just made by the Chairman of the Good Offices Committee and would testify to the objective, conscientious and capable manner in which the Committee had applied itself to its task. Although disagreements had occasionally arisen, the discussions had throughout been conducted in a cordial and friendly spirit and both sides had been determined to do their utmost to find a way out of the impasse. He trusted that the Fourth Committee as a whole would be animated by the same spirit. It would be most unfortunate if an impression were to be created that some delegations were trying to discredit the work of the Good Offices Committee or did not feel a genuine desire to put an end to the difficult situation which now existed between the United

Nations and the Union of South Africa. The Union Government was as desirous of finding a way out of the difficulty as were those members of the Fourth Committee who, at the twelfth session, had suggested a new approach. For that reason his delegation had readily agreed to discuss the whole issue in a spirit of helpful co-operation. It was also for that reason that the Union Government had invited the Good Offices Committee to Pretoria. It could fairly be claimed that the Union Government had gone to considerable lengths in its efforts to find an acceptable solution of the problem.

19. The Good Offices Committee had initially proposed that arrangements should be established reproducing as precisely as might be practicable the arrangements existing under the Mandates System. But in view of its consistent stand, based on both juridical and practical considerations, his Government had been unable to accept that proposal and had reiterated its 1951-1952 proposal^{1/} for an agreement to be concluded with the three remaining Allied and Associated Powers. In its opinion the whole situation derived from the Treaty of Versailles and not from the San Francisco Conference. The Committee should note that in 1951 and 1952 the Union Government's proposal had met with considerable criticism in South and South West Africa and, in reiterating that proposal, the Government had had to take account of the fact that it would not be generally acceptable at home. Yet the proposal had been reiterated—a further proof that the Union Government wanted to reach a solution.

20. The Good Offices Committee had not accepted the Union Government's proposal on the grounds that a similar offer had already been rejected by the General Assembly. The Union Government had then inquired whether any other alternatives had been considered by the Good Offices Committee. Four such alternatives had been mentioned, three of which had not been acceptable either to the Committee or to his Government. The fourth alternative was partition, and his Government's immediate reaction had been that it was the most practical proposal to be made so far and for that reason it merited serious consideration. As stated in the report of the Good Offices Committee, his Government had decided, after full consideration, that it was prepared to investigate the practicability of such a partitioning, if the General Assembly indicated that it was willing to consider it as a basis for an agreement. In his opinion such a proposal would be fully within the terms of reference of the Good Offices Committee.

21. It should be emphasized that the Fourth Committee was not being asked to approve partition, which was a very complex question calling for thorough consideration, but only to invite the Union Government to investigate the practicability of such a scheme. The investigation would cover, for example, the possibility of moving four or five reserves in the southern part of the Territory to the northern part of the Territory, which was favoured from the point of view of rainfall and sparsely inhabited. In addition the views of all groups of the population would have to be ascertained.

22. It was of considerable significance that the Good Offices Committee thought that the idea of partition deserved to be examined. After conducting an investi-

gation the Union Government would report back, presumably to the Good Offices Committee, if, as he hoped, it remained in existence. The Committee, in turn, would report to the General Assembly.

23. His Government was under no illusions about the possible difficulties of partition, but it sincerely desired to resolve the issue. He could assure the Committee that, if his Government were asked to undertake the suggested investigation, it would do so as soon as possible and would look into all aspects of the matter.

**Requests for hearings (A/C.4/377 and Add.1,
A/C.4/378) (continued)**

REQUESTS CONCERNING AGENDA ITEM 13 (REPORT OF THE TRUSTEESHIP COUNCIL) (A/C.4/377 AND ADD.1) (continued)

24. The CHAIRMAN invited the Committee to consider the three requests for hearings submitted in connexion with the report of the Trusteeship Council (A/C.4/377 and Add.1).

25. Mr. DE CAMARET (France) pointed out that two of the petitioners—Mr. Moumié and Mrs. Ouandie—frankly admitted that they were members of parties that had been outlawed by the French Government. As the representative of the country responsible under the Trusteeship Agreement for the peace, order and good government of the Trust Territory, he must therefore object to the granting of a hearing to those petitioners. His delegation had never objected to granting legitimate hearings, but hearings should not be granted to people outside the law who had tried to overthrow the established régime by force. Most of the leaders of the Union des populations du Cameroun and affiliated organizations were sought by the police for crimes against ordinary law and had taken refuge abroad. Since they had left the Trust Territory tremendous political and constitutional changes had taken place. Mr. Moumié and Mrs. Ouandie had been abroad since 1955 and could not have the slightest knowledge of the current situation in the Territory.

26. It was the trustee's duty to do everything possible to remove any obstacles to the rapid and normal development of the ward and he questioned whether it would be advisable for the United Nations to grant hearings to people whose violent and illegal activities in the Trust Territory had been inspired by totalitarian countries and had retarded the Territory's development. His delegation would vote against the granting of hearings to Mr. Moumié and Mrs. Ouandie.

27. Sir Andrew COHEN (United Kingdom) said that he had not opposed the Fourth Committee's granting a hearing to Mr. Ntumazah at the twelfth session of the General Assembly. However, after listening to Mr. Ntumazah's completely misleading statements, he had wondered whether his abstention had been wise and he doubted whether it would help the people of the Trust Territory or the United Nations to hear him again.

28. He was very much concerned with the question of procedure. A visiting mission would be going to the two Cameroons in a month's time. It was charged among other things with the task of examining petitions and investigating on the spot such petitions as it recognized as meriting special investigation. It would therefore be the negation of good procedure to hear now a petitioner from the Territory. Furthermore, while the

^{1/} See A/1901, para. 25, and A/2261, para. 12.

General Assembly and the Trusteeship Council were competent to accept petitions and examine them in consultation with the Administering Authority, he doubted whether the very brief telegram from Mr. Ntumazah (A/C.4/377, para. 1) could be called a petition. The Committee had no idea what Mr. Ntumazah wanted to say, or why he had not asked to be heard by the Trusteeship Council. Nor could it be alleged that the Cameroons under British administration was a Territory where the petitioner could not make himself heard through the proper local organs; elections were to be held in the Southern Cameroons early in 1959 and anyone could seek election.

29. The right of petition was extremely important to the United Nations; it should be carefully guarded and the relevant procedure carefully regulated. There was a grave danger that to grant Mr. Ntumazah a hearing would discredit the right of petition. He would therefore vote against granting Mr. Ntumazah's request.

30. Mr. OSMAN (United Arab Republic) said that his delegation had always maintained that the right of petition was a sacred right of the inhabitants of the Trust Territories. In granting a hearing the Committee did not endorse the views of petitioners, but merely sought to obtain additional information on which to base its own opinions. He would therefore support the requests for a hearing from Mr. Ntumazah, Mr. Mourié and Mrs. Ouandie.

The Committee decided by 45 votes to 10, with 17 abstentions, to grant the request for a hearing from Mr. Ntumazah (A/C.4/377, para. 1).

The Committee decided by 43 votes to 10, with 18 abstentions, to grant the request for a hearing from Mr. Mourié (A/C.4/377, para. 2).

The Committee decided by 44 votes to 10, with 16 abstentions, to grant the request for a hearing from Mrs. Ouandie (A/C.4/377 Add. 1).

REQUESTS CONCERNING AGENDA ITEM 39 (QUESTION OF SOUTH WEST AFRICA) (A/C.4/378) (continued)

31. The CHAIRMAN invited the Committee to consider the two requests for hearings submitted in connexion with the question of South West Africa (A/C.4/378).

32. Mr. LOUW (Union of South Africa) said that, as in the past, his delegation must object strongly to the granting of hearings. It was, for one thing, difficult to see what evidence either petitioner could give on sub-item (a) of agenda item 39, namely the report of the Good Offices Committee.

33. He questioned Mr. Scott's qualifications to speak on behalf of the native inhabitants of South West Africa and, particularly, the Hereros. The fact that Mr. Scott had been permitted to give evidence in the past should not constitute a precedent. In the past, the Union Government had objected to hearing him on legal, procedural and political grounds and it reiterated its objection. Firstly, Mr. Scott was not an inhabitant of South West Africa and never had been; he had spent less than a month there some time previously. Accordingly, his only knowledge of the Territory was hearsay. Secondly, his credentials were most questionable. At best he was only the self-appointed agent

of a relatively small part of the population of South West Africa. He had at one time claimed to represent the Ovambu tribe and had presented a petition from them (A/2913, annex VIII). The South African Government had found, on inquiry, that none of the signatories to the petition had ever been heard of and it had strong reasons for believing that they were fictitious. Almost half the Herero tribe lived in Bechuanaland, not in South West Africa. A group of leading Hereros had assured the speaker that Mr. Scott represented only a small portion of the tribe. Chief Kutako, whose communications were always so well drafted, was illiterate and could sign his name only with difficulty. Lastly, Mr. Scott's past record hardly justified that he should be regarded as a reliable witness.

34. As for the other petitioner, Mr. Kerina (Getzen), he was surprised that a responsible body like the Fourth Committee should have agreed to receive evidence from a person having no standing in South West Africa or in the Herero tribe of which he was a member. Mr. Kerina (Getzen) was an expatriate who had come to the United States as a student. In an article he had described himself as a South West African who had "escaped" overseas in order to give evidence as a petitioner to the United Nations. Like his previous statements to the Fourth Committee during the eleventh and twelfth sessions of the General Assembly, that was completely untrue. He had not escaped. He had consistently received every possible facility from his Government. In 1952 he had applied to the Union Government for a passport to study and had been granted a passport valid until 1957. Between 1956 and the present time the petitioner had applied on several occasions for a renewal of his passport and several renewals for periods of six months had in fact been granted, although it appeared that he had no present intention of returning to South West Africa and had obtained permanent employment in the United States.

35. There were, however, other far more important reasons for his Government's objection to the granting of requests for oral hearings. His delegation had stated them in the past, but he would repeat them. Firstly, such oral evidence was inadmissible on juridical grounds, for even if the United Nations were legally competent to exercise jurisdiction over South West Africa there was no provision in the Charter authorizing it unilaterally to grant oral hearings without the consent of the State concerned. The fact that it had done so in the past could not be regarded as legalizing a repetition of the same action now. It was true that General Assembly resolution 1047 (XI) authorized the Committee on South West Africa to grant hearings to petitioners in accordance with the advisory opinion of the International Court of Justice of 1 June 1956.^{2/} Apart from the fact that his Government did not accept that advisory opinion, it should be pointed out that it was irrelevant in the present instance since the topic which the Fourth Committee was to discuss under sub-item (a) of agenda item 39, namely, the report of the Good Offices Committee, did not deal with the matters on which the two petitioners

^{2/} Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23. Transmitted to Members of the General Assembly by a note of the Secretary-General (A/3147).

presumably wanted to give evidence but with the international status of the Territory. In addition, he would like to point out that even if it could be agreed that the United Nations had inherited the functions of the League of Nations—an argument which his Government rejected—the Permanent Mandates Commission of the League had not been authorized to grant oral hearings to petitioners. The right of petition, which the Covenant had not provided for in any form, had been introduced into the Mandates System by the Council of the League in 1923 and the Permanent Mandates Commission had subsequently considered the question of oral hearings, both at the request of petitioners and on its own initiative. It had referred the matter to the Council in 1926, and in a resolution adopted on 7 March 1927 the Council had decided that there was no reason to modify the procedure followed until then by the Permanent Mandates Commission.

36. Secondly, the granting of the requests would be improper from the procedural standpoint. He noted in that connexion the opinion of Judge Winiarski that the General Assembly would be justified in authorizing the Fourth Committee to undertake such hearings only if warranted by imperative considerations and if kept within reasonable limits and governed by the rule of good faith.^{3/} In the light of that opinion, the Committee would do well to consider whether the hearings granted the two petitioners in the past had served any useful purpose.

37. Thirdly, the granting of the request for hearings would be politically most unwise, having regard particularly to the identity of the two persons concerned. The Committee was well aware of the harmful effect which the granting of hearings had had upon relations between the Union Government and the United Nations in the past. It knew that the Union Government felt strongly about the matter and had consistently objected to the granting of such hearings. That was, indeed, the issue which had led the Union Government delegation to withdraw from the Fourth Committee in 1949 and from the General Assembly as a whole in 1951. When the Union Government had been asked to enter into discussions with the Good Offices Committee it had clearly indicated that its decision would depend *inter alia* upon other actions which might be taken by the United Nations in connexion with South West Africa. It had ultimately agreed to participate in the discussions only because of the more conciliatory attitude which had become apparent in the Committee. Should the Fourth Committee, in spite of those considerations, grant the present requests for hearings, it might well jeopardize the work of the Good Offices Committee. If it seriously desired to co-operate with the Union Government in putting an end to the impasse which had so long prevailed, it should realize that such a vote would create a very serious situation.

38. Mr. AKO-ADJEI (Ghana) thought that emphasis should be placed not on the merits or demerits of the individuals requesting hearings but on the inherent right of the Committee to hear any evidence, from whatever person and in whatever form, which might be useful to it in carrying out its functions. Both the Good Offices Committee and the Fourth Committee were guided primarily by concern for the welfare of the peoples of the Territory; it was therefore important

that the views of those peoples should be heard. He would accordingly urge that the petitioners' request should be granted.

39. Miss BROOKS (Liberia) observed that the Committee's experience over a number of years had been that, with the exception of Mr. Scott and Mr. Kerina (Getzen), persons representing the inhabitants of the Territory had been unable to appear before the Committee. Furthermore, the information provided by the two petitioners had proved useful to the Committee in its consideration of conditions in the Territory. The fact that representatives of the Union of South Africa were now present after an absence of several years made it all the more logical that the requests should be granted, since they could now present their side of the picture.

40. Mr. ABIKUSNO (Indonesia) disagreed with the statement of representative of the Union of South Africa that the Charter did not provide for the granting of oral hearings to petitioners. The Charter provided for supervision by the General Assembly of conditions in dependent territories with a view to their orderly advancement towards emancipation. The rejection of a request for a hearing might be interpreted as an attempt to prevent the General Assembly from carrying out that function. In consistently maintaining the view that requests for hearings should be granted, his delegation was motivated by two considerations: firstly, it felt that the wishes of the dependent peoples must be made known if the General Assembly was to be able effectively to carry out its supervisory functions in accordance with the Charter; secondly, such hearings contributed to the Fourth Committee's understanding of conditions in the Trust Territories and strengthened the bond between the United Nations and dependent peoples. The contention of the Union of South Africa that the granting of the requests would be procedurally improper was therefore wholly unfounded.

41. Mr. KELLY (Australia) inquired whether the request of Mr. Kerina (Getzen) could have any relation to General Assembly agenda item 39 (d), which dealt with the election of three members to the Committee on South West Africa.

42. Mr. PACHACHI (Iraq) expressed the view that it was not for the Committee to pass judgement on the personal merits of petitioners. All that it could do was to consider whether their statements might in any way be helpful to the Committee in its deliberations and whether they represented any of the people of the Territory, however small a group. Mr. Scott's letter made it clear that as the Hereros had been unable to have one of their own people address the Committee they had again asked him to present their views. If the Union Government objected to the granting of a hearing to Mr. Scott, he would like to know why it had not found it possible during the past twelve years to allow someone whom it considered a reliable spokesman for the Hereros to appear before the Committee. Surely it was not because the inhabitants of the Territory were entirely satisfied with conditions as they were; paragraphs 168-172 of the report of the Committee on South West Africa (A/3906) showed that that could hardly be the case. He likewise could not agree with the position taken by the Union of South Africa that the report of the Good Offices Committee

^{3/} *Ibid.*, p. 33.

(A/3900) was something which concerned only the United Nations and the Union Government, for that document referred to matters which were of the greatest importance to the inhabitants of the Territory. Finally, it might well be asked why the Union Government itself should not take the new approach and show the willingness to compromise which it had welcomed from the Committee. For those reasons and because the advisory opinion of the International Court of Justice of 1 June 1956 made it clear that it was within the competence of the Committee to grant requests for hearings on South West Africa, he would vote affirmatively in the matter and would appeal to the other members of the Committee to do likewise.

43. Mr. OSMAN (United Arab Republic) observed that the Committee could not make a serious effort to resolve the problem of South West Africa without hearing the views of those who were most closely concerned, namely, the inhabitants of the Territory. If they were apprehensive that plans were being considered to modify the international status of the Territory as recognized by the General Assembly and the International Court of Justice, it was only fair to offer them an opportunity to put their views before the Committee.

In the past the Committee had granted the requests for hearings from petitioners who had then been unable to appear because the Union Government had turned down their applications for passports. He would therefore vote in favour of the requests submitted by Mr. Scott and Mr. Kerina (Getzen).

44. Mr. PERERA (Ceylon) said that the matter which the Committee was now considering was of vital importance for the future of subject peoples seeking emancipation. In reply to the remarks by the representative of the Union of South Africa about the petitioners themselves, he would emphasize that it was for the Committee as a whole rather than for any single delegation to decide whether the credentials of a petitioner were valid. As for the Union Government's statement challenging the right of the Committee to hear petitioners, the principle that the Committee enjoyed that right had long since been accepted and by now had come to have the force of law. It should not be forgotten that the representatives of the Union Government would themselves have the right to cross-examine the petitioners if the requests for hearings were granted.

The meeting rose at 12.55 p.m.