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**Chairman: Mr. Thanat KHOMAN (Thailand).**

**AGENDA ITEM 38**

- Question of South West Africa (continued)**
- (a) Report of the Committee on South West Africa (A/3626; A/AC.73/L.10);
- (b) Study of legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa: special report of the Committee on South West Africa (A/3625)

**GENERAL DEBATE (continued)**

1. Mr. ABIKUSNO (Indonesia) observed that the facts described by the petitioners from the Territory (653rd to 655th meetings) had confirmed the impression that the feelings of the indigenous peoples, which had hitherto been expressed peacefully, might one day become explosive. It was therefore more than ever necessary for the United Nations to adopt positive and concrete measures for the solution of the problem of South West Africa. The resolutions adopted by the General Assembly at its eleventh session showed that the Fourth Committee was resolved to study all possible methods of putting an end to the policy now being followed by the Union Government in South West Africa. They also proved that the Committee was aware of the need to prevent the Union Government from incorporating the Territory and thus removing it from the supervision of the United Nations.

2. Without going into the details of the situation prevailing in the Territory, which had already been described by earlier speakers, he stated that his delegation supported the Committee's recommendation that the Mandatory Power should take steps to repeal all racially discriminatory legislation and practices in the Territory and that it should take urgent measures to revise the existing policies and practices of Native administration in a manner which would ensure the fulfilment of its obligations and responsibilities under the Mandate (A/3626, annex I, para. 37). The discriminatory policy pursued by the Union was incompatible with the obligations of a member of an international organization and its refusal to participate in the Committee's meetings showed that it wished to evade any judgement that might be passed on its policy.

3. Nevertheless, no modification of the international status of South West Africa could be effected without the co-operation of the Union Government, which for its part could not modify that status unilaterally. The International Court of Justice, in its advisory opinion of 11 July 1950<sup>1/</sup>, had specifically stated that the Union of South Africa did not have the competence to modify the international status of the Territory without the consent of the United Nations. The Indonesian delegation would therefore support any resolution requiring the Union Government's compliance with its obligations under the Mandate. It fully approved of the idea of sending to the Territory a United Nations commission consisting of representatives of Member States, former Members of the League of Nations. In support of that idea, he cited the separate opinion of Sir Arnold McNair<sup>2/</sup>.

4. The Indonesian delegation did not propose to engage in a debate on the question of legal action open to the United Nations to ensure the Union Government's fulfilment of its obligations; it supported the conclusions in chapter IV of the special report of the Committee on South West Africa (A/3625), to the effect that advisory opinions of the International Court of Justice could be obtained, in accordance with Article 96 of the Charter, on the question whether specific acts of the Mandatory State were in conformity with the obligations assumed by it under the Mandate, including, for example, whether the status of the Territory had been modified in a manner and to a degree incompatible with the obligations of the Mandate.

5. In conclusion, he laid stress on Judge Lauterpacht's opinion, quoted in paragraph 22 of the special report, with regard to the legal effect of resolutions of the General Assembly. Although the United Nations lacked the legal machinery to force the countries referred to in its resolutions to comply with them, it nevertheless exercised a powerful influence over public opinion, and no State could take the liberty of ignoring world public opinion if it wished to retain the esteem of other nations.

6. Mr. KADRI (Iraq) congratulated the Committee on South West Africa and the Secretariat on the documents they had prepared for the Committee. He also stressed the useful contribution made by the Reverend Michael Scott and Mr. Getzen. He pointed out in that connexion that, although Mr. Jabobus Beukes of the Rehoboth Community had been threatened with sanctions if he addressed further petitions to the United Nations, the Fourth Committee had declared, at its 653rd meeting, its willingness to grant a hearing to Mr. Wilhelm Heyn and Dr. Joachim Seegert. The Iraqi delegation

<sup>1/</sup> International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128. (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/1362).

<sup>2/</sup> *Ibid.*, p. 158.

had supported the proposal made to that effect by the Mexican representative, in the belief that the wishes and aspirations of all segments of the population should be heard.

7. At the eleventh session, the Iraqi delegation had expressed to the Committee (573rd meeting) its satisfaction at certain improvements in the conditions prevailing in South West Africa. However, the reports before the Committee made such a painful impression that the Iraqi delegation felt obliged to reiterate that such examples were too few and did not appreciably light up the darkness that engulfed South West Africa.

8. The United Nations Charter, like the Covenant of the League of Nations, did not leave the care of the populations of Non-Self-Governing Territories to the absolute discretion of the administering Powers. The Iraqi delegation considered that three principles of the Charter were applicable to the case of South West Africa, namely, annual examination of conditions in the Territory, assessment of the degree of progress achieved and recommendations to the administering Power on the course of action most likely to shorten the path of the indigenous population towards self-government or independence. It entertained no doubt as to the legal status of the Territory, which had been settled once and for all by the advisory opinion of the International Court of Justice in 1950. The United Nations had accepted that decision of the International Court as a temporary measure pending the application of the International Trusteeship System to South West Africa.

9. The policy pursued in the Territory by the Union Government was at variance with its assertion at one time that the Territory would be administered in the spirit of the Mandate. At the 656th meeting, the Egyptian representative had enumerated the violations committed by the Union Government against South West Africa, the United Nations and the International Court of Justice. The fact that the provisions of the Universal Declaration of Human Rights were not legally binding on the signatories was of little comfort to those who had the welfare of the Territory and of the Union of South Africa itself at heart. The Iraqi delegation had no doubt that if the Union Government persisted in its attitude, it would be guilty of a further violation, this time against the peace and security which it had been able to maintain by repressive and inhuman measures. As the Reverend Michael Scott had said, the world and South Africa would do well to heed the warnings of history that it was impossible to stop up all the channels of reform without one day opening up the floodgates of human resentment.

10. The United Nations had been discussing and studying the conditions prevailing in South West Africa and the status of the Territory for more than ten years, but its efforts had not been wasted. The existing status of the Territory had been settled and there was wide agreement among Member States concerning its future status. The situation could be summed up as follows: the Union Government was pursuing a policy designed to incorporate the Territory in the Union of South Africa; South West Africa was already being ruled as an integral part of the Union; the overtures made by the United Nations to the Union Government had so far been of no avail; the attitude of the Union Government with regard to political repression, economic exploitation, displacement of

populations, alienation of land, the abuse of manpower and the apartheid policy had stiffened and communities which had hitherto been spared were now suffering from the imposition of such measures.

11. Faced with such an attitude, the United Nations could not reverse its judgement and declare all its past resolutions null and void. It could not ignore the advisory opinion of the International Court of Justice or consider that the Mandate had lapsed. The Union Government had no competence to modify unilaterally the international status of the Territory. Since the international character of the problem of South West Africa had been established, the United Nations was in duty bound to continue its efforts until a satisfactory solution, which guaranteed the implementation of the provisions of the Charter, was reached. The Iraqi delegation would support any proposal providing for a concerted effort towards a reappraisal of the problem by the Assembly.

12. Mr. KHADRA (Saudi Arabia) noted with regret that despite every endeavour the problem was no nearer solution than it had been a decade before, for the Union of South Africa had refused to fulfil its obligations, first as a Member of the League of Nations and then as a Member of the United Nations. The Mandate had been primarily a means whereby colonies might attain to sovereignty and independence; it had been a sacred trust placed in the hands of the Mandatory Power. It was peculiarly ironical that the country of Field Marshal Smuts, the statesman who, more than any other, had contributed to the evolution of the concept and to the very wording of Article 22 of the Covenant, should be the only Mandatory Power to fail in its mission.

13. The Saudi Arabian delegation deplored the absence of a representative of the Union of South Africa. The Union Government had formerly participated in the debates of the Fourth Committee and had corresponded with the Chairmen of the various committees responsible for that question. Saudi Arabia hoped that it would reconsider its attitude and resume its co-operation with the United Nations.

14. The reports of the Committee were informative and lucid documents. The general report (A/3626), based on information drawn from official documents and other sources, dealt in the main with the increasing extent of discriminatory practices, particularly in respect of the alienation of Native lands and the more rigid application of the policy of apartheid. In that connexion, he deplored the fact that the Union Government, in describing the different groups of inhabitants in the Territory, used such terms as "European", "non-European", "Coloured Persons" and "Natives". As was evident from paragraph 20 of the report, which mentioned the case of Mr. Beukes, the South African Government was endeavouring to obstruct the right of petition by means of threats and intimidation. In other cases the Government had refused to issue passports to persons who wished to be given a hearing by the Fourth Committee.

15. The report showed that the Union Government intended purely and simply to annex the Territory of South West Africa, regardless of its obligation under the Mandate and the advisory opinion of the International Court of Justice. It justified its actions now by referring to the results of the general elections of November 1955, in which only the European population

had participated. The Nationalist Party, which maintained that the Mandate had lapsed and advocated closer association with the Union, had won a majority of the votes.

16. The situation of the people in the Territory was constantly worsening. Africans were subject to curfews and compelled to live in reserves; they could not move without a permit. The country's main economic resources were owned almost entirely by Europeans; the Natives were confined to unskilled employment and in practice had neither union rights nor any opportunity for social advancement. Europeans, although numbering less than 12 per cent of the population, owned 45 per cent of the Territory's land and the alienation of land as well as the compulsory evacuation of Africans continued. Social, health and sanitary conditions were deplorable. Racial discrimination prevailed in education.

17. It was clear from a study of the situation in the Territory that the Administration's policy was designed to promote the interests of Europeans at the expense of those of Africans, a fact which could have the gravest consequences. It might be well to remember what Mr. Getzen had said to the Committee: it was to be feared that if no solution were found the people of South West Africa might resort to every means at their command.

18. Referring to the special report of the Committee on South West Africa (A/3625), he reviewed the various possibilities for legal action open to the organs of the United Nations, its Members and former Members of the League of Nations. The latter appeared to have the surest legal foundation. There appeared to be little doubt that the former Members of the League of Nations who were now Members of the United Nations or at any rate parties to the Statute of the Court, had the right to invoke article 7 of the Mandate. The Court in its advisory opinion had declared itself competent under article 7 and its decision should be binding since, under Article 94 of the Charter, every Member of the United Nations undertook to comply with the decisions of the Court.

19. But before the United Nations embarked on such a course he wished to endorse the appeal made at the 656th meeting by the Iranian delegation to members of the British Commonwealth to intercede with the Union Government to persuade it to co-operate with the United Nations. He did so despite the warning given at the eleventh session of the General Assembly (577th plenary meeting) by Mr. Louw, Minister of External Affairs of the Union Government, that sooner or later the South African Government must consider its membership of the Organization. He hoped that intercession would induce the Union Government to fulfil its obligations as Mandatory Power. If the Union persisted in its attitude, the members of the United Nations who had been Members of the League of Nations at the time of its dissolution should logically invoke article 7 of the Mandate. He hoped that it would not be necessary to go so far.

20. Mr. TAYLHARDAT (Venezuela) expressed his delegation's deep regret that, although thirty-six resolutions on the question of South West Africa had been adopted by the Assembly, no progress had been made with that question because the Mandatory Power refused to comply with the provisions of Chapter XI,

and more particularly, Article 77, of the United Nations Charter. The position of the Venezuelan delegation had not changed in that regard. It maintained that the Territory should be placed under trusteeship and that, as stated in the opinion of the Court, the General Assembly had the legal authority to carry out the supervisory duties assumed by the League of Nations. The Venezuelan delegation had therefore voted with the majority for all the resolutions recommending that the Territory should be placed under trusteeship, which was not only the just desire of the inhabitants, but the only acceptable solution that would end the controversy.

21. The Venezuelan delegation had studied both of the reports of the Committee on South West Africa, which were of great interest because of their objective and impartial examination of the situation and because of the well-considered recommendations which they contained. The general report (A/3626) revealed that the situation had grown worse during the past year because of the policy which the Mandatory Power had followed in the Territory. The special report (3625) touched upon an extremely delicate question: for the first time the Assembly was endeavouring to proceed from statements of principles and expressions of hope to the practical utilization of the means at its disposal to ensure that the Mandatory Power would fulfil the solemn mission with which it had been entrusted. The Venezuelan representative agreed with the suggestion made at the 658th meeting by the representative of Guatemala that, in order to derive the most benefit from the special report, a thorough study should be made of the measures recommended by the Committee and of their effectiveness and possible repercussions if executed. The Committee should not discuss the special report during the current session, but the General Assembly should invite the Member States to transmit their views on the question, which the Assembly would examine, together with the report, during its thirteenth session.

22. Mr. FILALI (Morocco) pointed out that the problem of South West Africa had been before the General Assembly for more than ten years, that all efforts to solve the problem had been ineffective, and that that fact was bound to harm the Organization's prestige. The Union Government was responsible for that situation, since it continued consistently to ignore the decisions of the Assembly and the advisory opinions of the Court, thereby adopting an attitude which was politically unwise and which was not in conformity with a proper interpretation of the Charter.

23. The Moroccan delegation did not harbour any feeling of hostility towards the Union of South Africa, but it was regretfully obliged to make a choice. The discussion in the Committee was only one aspect of the conflict between the partisans of freedom and those who sought to perpetuate the out-dated colonial system. The United Nations had a legal and moral obligation to defend the higher interest of the people of South West Africa, because the Territory was still subject to the Mandate, which had not ceased to exist with the League of Nations; the Union Government should fulfil the obligations which it had freely assumed, and it was obliged in particular to promote the material and moral welfare and the social progress of the Territory's inhabitants. The Union upheld the position that the Mandate no longer existed, that its international obliga-

tions had lapsed, and that the United Nations was in no way authorized to exercise any supervision of the situation in the Territory. That position was based on reasons connected with colonial policy: the Union wished to subject the population of the Territory to a policy of apartheid, racial segregation and inhuman economic exploitation. No effort should be spared to demonstrate to the Union that that attitude was not compatible with its true interests.

24. The Moroccan delegation had taken note of the special report in which the Committee described with great clearness the legal means open to the Organization to ensure that the rights of the Territory's population would be respected. In his delegation's opinion, recourse to the International Court was of great legal and moral importance, but the means of conciliation had not been exhausted. It would support any initiative in that direction; and, in that connexion, it joined with the delegations which had appealed to the members of the British Commonwealth, and particularly the United Kingdom, to intervene with the Union of South Africa.

25. Mr. MARINESCU (Romania) regretted that the General Assembly had been unable to record any improvement in the situation in South West Africa. The Government of the Union of South Africa had violated the Charter of the United Nations by refusing to place South West Africa under the Trusteeship System. In point of fact, the Union had proceeded to annex South West Africa and was subjecting it to a régime of racial discrimination, in complete disregard of its international obligations and of the many resolutions adopted by the General Assembly.

26. The fears expressed in the Fourth Committee (576th meeting) by the Romanian delegation at the eleventh session to the effect that the situation would become worse had been confirmed. The report of the Committee on South West Africa noted that the transfer of the Territory's Native affairs to the Union of South Africa had resulted in a still stricter application of the policy of racial segregation. One of the most disquieting results of that policy was that the indigenous population was being steadily driven from the lands which belonged to it. The indigenous inhabitants were being deprived of all political rights and were cruelly exploited. Although it drew enormous revenues from that exploitation, the Administration allocated very little money indeed to the development of the Native areas.

27. Now more than ever, the General Assembly must seek to persuade the Union of South Africa to put an end to the inhuman living conditions being forced upon the indigenous population of South West Africa and allow the people to develop freely towards self-government and independence. The Romanian delegation believed that immediate steps should be taken to ensure that the Charter of the United Nations was respected, and it would support any resolution to that effect.

28. Mr. KENNEDY (Ireland) regretted the absence of a representative of the Union of South Africa. It was a matter of urgency to secure the return of a delegation from the Union to the Committee. The present situation was detrimental to the prestige of the United Nations and the aims of the Charter could never be realized if Governments registered their protest against recommendations approved by the large majority of Member

States by refusing to participate in the Organization's work. As a small nation Ireland was particularly disturbed at any course of action which was detrimental to the influence and authority of the Charter, because the smaller nations depended for their security and survival upon the efficacy of the United Nations. The Irish delegation sincerely hoped that out of the debate would emerge a fresh approach to the problem of South West Africa which would encourage the return of the South African delegation.

29. As a former Member of the League of Nations and as a recent Member of the United Nations the delegation of Ireland was of the firm belief that the well-being and development of the population of South West Africa formed a sacred trust of civilization and that the Government of the Union of South Africa, despite its assertions, was bound to fulfil the obligations incumbent upon it under the Mandate. As long as that Government failed to meet its obligations and continued to ignore the recommendations of the General Assembly, the Members of the United Nations, especially the thirty-nine former League of Nations Members, would bear individual and collective responsibility for the exercise of that sacred trust.

30. The question before the Committee might perhaps be considered under the following three principal headings: the political, economic, social and educational situation in South West Africa; the legal position of the Government of South Africa in its capacity as Mandatory Power; and the diplomatic or other action which would make it possible to arrive at a solution to the question.

31. With respect to the situation in South West Africa, the Committee's report clearly showed the unwisdom of of the Union Government's refusal to participate in the debates and to co-operate with the General Assembly. The truth could not be concealed and his delegation noted regretfully that conditions in the Territory, especially for the Native population, were still far from meeting the standards implicit in the Mandates System. No progressive transfer of the tasks of administration to representative institutions of South West Africa had taken place; the Union was continuing its policy of confiscating lands and its policy of apartheid. Legislation limiting freedom of movement in the Territory and all discriminatory measures in the field of education should be abolished forthwith. Racial discrimination in the educational system was particularly out of harmony with the spirit of the twentieth century and with the whole trend of the civilized world.

32. The delegation of Ireland believed the legal position of the Government of the Union of South Africa to be perfectly clear and supported unreservedly the advisory opinion of the International Court of Justice as well as the conclusions in the special report of the Committee on South West Africa with respect to legal action open to former Members of the League, acting either individually or jointly.

33. With regard to specific steps to induce the Government of the Union of South Africa to co-operate with the Organization, the Irish delegation had not participated in the debates of the previous eleven years and looked forward to a fresh approach to a perennial problem whose solution had not been made easier with the passage of time. As the United



Nations moved into its second decade it had seen a new trend towards a quiet diplomacy supplementing public debate. In a recent annual report on the work of the Organization, the Secretary-General spoke of "new forms of contact" as well as "new methods of deliberation and new techniques of reconciliation" (A/2911, p. xii). The Irish delegation was not taking up the suggestion made in the Fourth Committee (575th meeting) during the eleventh session that the Secretary-General should visit the Union. Apart from the many onerous tasks now entrusted to him, the delegation felt that the General Assembly should not contract the habit of shifting its own responsibilities on to the overloaded shoulders of the Secretary-General whenever particularly difficult questions arose. But the delegation would suggest that the Committee should examine the possibility of a small and carefully selected group of representatives of former Members of the League, who were present Members of the United Nations, taking up the question and if possible visiting the Union in order to restore the relations which had once existed between the United Nations and the Union Government and to help to awaken a realization there of the responsibilities of the Mandate. Along those lines the General Assembly might find the means of employing a technique similar to that used in dealing recently with a violation of the Charter in Central Europe.

34. The United Nations had inherited the spirit of the League of Nations; it must do everything in its power to contribute to the well-being and the development of the inhabitants of South West Africa and to preserve the international status of the Territory. The delegation of Ireland joined the other delegations in once again calling on the Government of the Union to respect the basic rights of man and the dignity of the human person.

35. Mr. BOZOVIC (Yugoslavia) took exception to the argument of the Government of the Union of South Africa that the problem of South West Africa had existed only since the creation of the United Nations and was the result of the hostile attitude of the majority of the Members of the Organization towards the Union of South Africa. In reality, the problem had begun to arise before the end of the First World War. It had existed during the whole period of activity of the Permanent Mandates Commission. In 1933, the latter had deplored the unfortunate relations existing between the White population and a large part of the indigenous population of the Territory. In 1934, one of the members of the Commission had declared that no progress had been made, and that, of all the indigenous populations with which the Commission had to deal, that of South West Africa seemed the most backward. Twenty-three years later, the Committee on South West Africa, in its report (A/3626, annex I), was deploring the persistent tendency of the authorities to reduce the levels of living of the indigenous inhabitants of the Territory by means of a system of tyrannical regulations governing their places of residence and their movements, and by depriving them of all possibilities of economic progress and education.

36. Those facts demonstrated that the present difficulties were due only to the Union of South Africa, which refused to respect the international obligations that it had assumed by virtue of the Mandate and the Charter of the United Nations, which, contrary to what the representative of Israel seemed to think, was fully

applicable to the situation existing in South West Africa. However, the United Nations had constantly sought a just and fair solution that would take account of the interests of the Union as well as of those of the population of South West Africa and of the international community. In spite of the efforts of the United Nations, the Government of the Union continued to oppose peaceful negotiations and the situation of the Territory had not improved in the last forty years.

37. The Yugoslav delegation did not believe, as did certain delegations, that the efforts made had been absolutely in vain. First of all, the international community could not, without grave risk to its own security, permit recourse to conquest and to annexation as means of solving the existing problem. Further, the fact that the Union had ignored the recommendations of the General Assembly did not diminish the importance of those recommendations, which were a proof of the goodwill the Organization was displaying in trying to find a peaceful solution to the problem and which showed, too, how humanity felt in the present conflict between force and law.

38. The Government of the Union persistently asserted that it was continuing to administer the Territory of South West Africa in the spirit of the Mandate. The Organization was only too eager to be convinced of that fact and would be happy if the Union of South Africa furnished proof in support of its contention. There were many reasons for believing that that contention had no other purpose than to ease the conscience of those who preferred to remain in a state of legal uncertainty in the matter, and he wondered whether their silence meant that they approved such an unfortunate state of affairs.

39. The Yugoslav delegation had always considered the problem to be essentially humanitarian and political, and not legal. The possibilities for action were many and varied, but the Yugoslav delegation would like once more to leave the door open to negotiations and it hoped that reason and common sense would prevail. That is why it supported the suggestion of the representative of Guatemala (658th meeting) and of Mexico (659th meeting) which gave the Governments of Member States the possibility of making a thorough study of the special report of the Committee on South West Africa. The Organization should not have recourse to legal action before exhausting all other peaceful means. The Yugoslav delegation also wished to question the argument that the right to bring the matter before the International Court of Justice belonged only to the States that had been Members of the League of Nations and that were today Members of the United Nations.

40. The Government of the Union should be invited once again to co-operate with the United Nations to eliminate the causes of the tensions that existed in South West Africa. At the same time, an urgent appeal should be addressed to those who, because of their close ties with the Government of the Union, carried a great responsibility in the search for a solution.

41. In addition, the Department of Public Information of the Secretariat could, through appropriate means, inform world opinion of the situation and the difficulties confronting the Organization. The suggestion made by the representative of Guatemala at the 658th meeting

to the effect that the function of supervision should be separated from that of negotiation, the latter being assigned to a special committee, also merited careful study. Finally, the effect of the legislative and administrative measures on the international status of South West Africa should be examined. An advisory opinion of the International Court of Justice would be required to dispel any doubts that might remain on the matter.

42. The Yugoslav delegation would support any proposal leading to a peaceful solution of the question. It hoped that the Union Government would abandon its present attitude, which was prejudicial to its own interests.

The meeting rose at 4.45 p.m.