



C O N T E N T S

	<i>Page</i>
Requests for hearings (<i>continued</i>)	139
Agenda item 30:	
Question of South West Africa (<i>continued</i>):	
(b) Report of the Committee on South West Africa (<i>continued</i>)	139

Chairman: Mr. Luciano JOUBLANC RIVAS
(Mexico).

Requests for hearings (*continued*)

1. The CHAIRMAN announced that two telegrams had been received from Mr. Simon Kumah requesting a hearing for three petitioners in connexion with the item concerning the Togoland unification problem and the future of the Trust Territory of Togoland under British administration. If there was no objection, the telegrams would be circulated to the members of the Committee.

It was so decided.

AGENDA ITEM 30

Question of South West Africa (*continued*):

(b) Report of the Committee on South West Africa (*continued*)

2. Mr. ABOU-AFIA (Egypt) said that at the 491st meeting the South African representative had claimed that as the authority responsible for the administration of South West Africa his Government was not concerned as to what voting procedure was adopted in that respect by the General Assembly or as to whether it had the endorsement of the advisory opinion of the International Court of Justice.¹

3. It was not disputed that the South African Government was the responsible authority for the administration of that Territory. He would like, however, to ask the South African representative once again a question to which the Union of South Africa had never replied: upon what grounds and to whom was that Government responsible for the administration of the Territory? According to the South African Government, the Mandate had lapsed, the Territory had not been annexed and the Trusteeship System did not apply. But it had never explained whence it considered that it derived its right to administer the Territory. The General Assembly had been patiently seeking for ten years to place the case in the appropriate legal framework and thus to provide the legal basis which so far had been lacking. It

¹ *South-West Africa — Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955, p. 67.* (Transmitted to the Members of the General Assembly by the Secretary-General by document A/2918.)

could seek that foundation only in the Charter and the precedents established in all similar cases. The other former Mandatory Powers had had no difficulty in accepting the Trusteeship System. They, like the Union of South Africa, could have adopted a negative attitude, but they had required some sanction within the new framework of the Charter to be able legitimately to continue to administer the former mandated territories.

4. It might be asked whether the General Assembly could abandon its claim to supervision over South West Africa without betraying the trust placed in it. No body was better qualified to answer that question, or more objective, than the International Court of Justice. The Egyptian delegation deeply regretted that the South African Government was still unable to accept a view shared by all other Member States and to accept the advisory opinion of the Court.

5. His delegation nevertheless continued to hope that the time had come when the South African Government would respond to the General Assembly's reiterated appeals for co-operation. His delegation was glad to be able to endorse unreservedly the moderate and objective conclusions reached by the Committee on South West Africa, which had made a sustained effort to come to an agreement with the South African Government while keeping the General Assembly informed of conditions in the Territory in question.

6. Mr. SAAB (Lebanon) said that it was for the South African Government and people to break the deadlock which the matter had now reached. All the delegations wanted was to persuade the South African Government to act in its own best interests and in those of South West Africa and the international community. His delegation was making a friendly appeal to the Union of South Africa to do more than in the past to come to terms with the majority of its partners in the United Nations.

7. The problem was not merely a legal problem to be solved by a decision as to who should administer the Territory in question; it was primarily an African-European problem and an interracial problem. As such it called first for a genuine recognition of the role of Europe in the advancement not only of Africa but of all mankind. Surely a European South African approaching the whole problem of South West Africa in the spirit of the highest European ideals would see at least some truth in the reasoning of the General Assembly and the International Court of Justice with regard to the problem.

8. He would not review or evaluate all the arguments and counter-arguments about the status or the situation of the Territory. At the 491st meeting his delegation had voted for the draft resolution (A/C.4/L.405) endorsing the advisory opinion of the Court on the voting procedure on questions relating to reports and petitions concerning South West Africa, and would say nothing more on that subject.

In his opinion more attention should be paid to the statement made by the South African representative on his Government's basic attitude towards South West Africa. The Lebanese delegation felt that there was a positive element in that representative's repeated assurances that although his Government believed that the Mandate over South West Africa had lapsed, it had refrained from taking any step not in keeping with the spirit of the provisions of the expired Mandate, and that the South African Government had continued to administer the Territory in the spirit of the Mandate.

9. The Mandates System had been not only a European but specifically a European South African creation, since the late Field Marshal Smuts had been the originator of the mandatory idea. Field Marshal Smuts had suggested the Mandates System to the 1919 Peace Conference as a compromise between the old policy of pure partition and the new policy of self-determination. If the present South African Government would subscribe to Field Marshal Smuts' concept of the spirit of the Mandate, the task of the Fourth Committee would be easier.

10. In the opinion of the Lebanese delegation, the first logical step would be the consultation of all the people of South West Africa on whether they wished their Territory to become a part of the Union, a United Nations Trust Territory or an independent State. He could not see in the current action of the General Assembly any contradiction to the principle of such consultation. The South African delegation had accused the majority of the Assembly of being determined to make South West Africa into a Trust Territory. The Assembly was concerned about the possible gradual and practical incorporation of the Territory by the Union. Why should not the people of South West Africa themselves judge between the General Assembly and the Union? If the South African representative could give a positive and favourable answer to that question, the Lebanese delegation would immediately suggest to the Fourth Committee the formation of a sub-committee to study all aspects of the question and formulate concrete proposals. If the South African representative would suggest some other procedure, his delegation would be happy to consider it.

11. When addressing that question to the South African representative, the Lebanese delegation had in mind a pattern for dealing with Africans which had recently been set by a European State and an Arab-African State; i.e., the Agreement between the United Kingdom and Egypt of 12 February 1953 concerning the Sudan. The Sudan was at least as vital to Egypt as South West Africa was to South Africa, and was also of great importance to the United Kingdom, yet those two States had yielded all rights in the Sudan to the Sudanese themselves. Self-determination had been granted to both Arab and non-Arab Sudanese and there seemed no reason why it should not also be granted to both European and non-European South West Africans. The differences between the Sudan and South West Africa might lead to some variation in the modes of application of the principle of self-determination, but not to its negation. His delegation failed to understand why the South Africans did not apply in their interracial policy the concept of man that had been held for centuries in Arab Asia, in Arab Africa and in Europe.

12. Mr. BOROOAH (India) said that at the 491st meeting his delegation had not spoken on the draft resolution endorsing the 1955 opinion of the International Court (A/C.4/L.405), for it had considered that the General Assembly was obviously fully competent to exercise supervision over South West Africa. The South African representative, however, had argued at length that his Government could not accept the Court's 1955 opinion because of its attitude towards the 1950 opinion² and towards the larger issue of the right of the United Nations to supervise the administration of South West Africa. The Indian delegation could not accept the arguments advanced by the South African representative to show that the Court had mistakenly taken the view that the resolution adopted in April 1946 by the League of Nations³ presupposed that the supervisory functions formerly exercised by the League would be taken over by the United Nations. All the other former Mandatory Powers had acknowledged that it would be wise and legally and morally desirable to bring the former mandated territories under Chapter XII of the Charter. He had therefore been rather surprised at the South African representative's statement at the 491st meeting that placing South West Africa under trusteeship would not help to promote the material and moral welfare of its inhabitants. The South African representative was entitled to his own opinions but their accuracy and wisdom were questionable, bearing in mind the fact that all other mandated territories were under trusteeship and that none of the other administering Powers had yet claimed that trusteeship administration did not promote the welfare of the Trust Territories' inhabitants. As long as there was that complete divergence of outlook, he did not see how the gulf could be bridged.

13. His delegation had been much impressed by the detailed and comprehensive nature of the report of the Committee on South West Africa on Conditions in the Territory (A/2913, annex II) and by the objective assessment of the facts available to the Committee. He paid a warm tribute to the members of the Committee, who had performed an extremely difficult task with a remarkable measure of success, and congratulated the Secretariat for the great pains it had taken in obtaining information. His delegation had hoped that even though the Mandates System did not specifically provide for visiting missions, the administering Power might have encouraged the Committee on South West Africa to visit the Territory. That would have enabled the Committee to prepare a first-hand report on conditions there. The South African representative should have been the last person to make any complaint about the report's incompleteness. The Committee on South West Africa had sought without success the help and co-operation of the South African Government. He hoped that in future the South African Government would send a representative to attend the Committee's meetings, provide it with information and generally assist it in its task. The door remained open. In the past the South African Government had submitted reports and petitions to the United Nations. Now that a separate Committee on South West Africa had been

² *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 by document A/1362.)

³ League of Nations, *Official Journal, Special Supplement No. 194*, pp. 278-279.

established, he hoped that it would reconsider its decision and find it possible to co-operate constructively in the Committee's work instead of repeating year after year its arguments about the General Assembly's lack of competence.

14. The administration of the sacred trust referred to in Article 22 of the League Covenant had had three features: namely, the rights of the people, the obligations of the Mandatory Power and the obligations of the international supervisor. Those three interdependent features were essential for the proper discharge of the trust. The demise of the former supervisor did not dispense with the need for supervision; it probably increased it. Supervision was fundamental to the system and the supervisory organ had necessarily to be international in character; in other words it had to be the United Nations.

15. His Government welcomed the South African representative's participation in the discussion and examination in the Fourth Committee of the report on conditions in the Territory prepared without its help by the Committee on South West Africa. He proposed to subject that report to a close examination in the light of the South African Government's declared policy, which was twofold: namely that the administration would be in accordance with the Mandate and that the Territory would not be incorporated into the Union of South Africa.

16. His delegation noted with regret that there was no legislation or regulation defining the status of the Territory's indigenous inhabitants. The Committee's report showed that they were regarded as stateless persons under the protection of the South African Government. The League Council had decided in 1923 that the status of the indigenous inhabitants of a mandated territory was distinct from that of the nationals of the Mandatory Power and that they should not be invested with the nationality of that Power by reason of the protection extended to them, although voluntary naturalization was permissible.⁴ His delegation endorsed the Committee's recommendation (A/2913, annex II, para. 18) that legislation should be enacted defining the status of the indigenous inhabitants, which should be at least equal to that of the immigrant inhabitants. The Committee rightly believed that any law or practice which gave to foreign settlers rights not extended to the indigenous inhabitants was a violation of the principles of the Mandate.

17. He drew attention to the discriminatory definitions of the terms "Natives", "Coloured persons", and other "non-Europeans", referred to in paragraph 3 of the Committee's report. The existence of such discriminatory practices ran counter to the spirit of the Mandate and he agreed with the Committee that they should be abolished immediately.

18. The Committee's report showed that the South African Government had integrated certain departments of the South West African Administration, and notably those relating to Native affairs, customs and excise, railways and harbours, police, defence, public services, external affairs, air communications and immigration, into its own administrative machinery. While article 2 of the Mandate undoubtedly gave the South African Government "full power of administration and legislation over the Territory" that authority was subject to the Mandate itself. A reading of the Mandate, coupled with Article 22 of the League Covenant, clearly

showed that the kind of wholesale administrative integration which was being practised was contradictory to the basic concept of the Mandate. In 1931 the League Council had decided that the Territory "must be capable of maintaining its territorial integrity and political independence".⁵ Clearly, one of the major aims of the Mandate was to preserve the distinctive character of the Territory and to develop it and its people until they were able to stand by themselves. The present integrated administration was not conducive to the development of a separate identity for the Territory or its people. The Committee on South West Africa should examine that aspect of the matter in more detail and report to the General Assembly in 1956 on all the implications of the present administrative integration vis-à-vis the Mandate and Article 22 of the League Covenant.

19. The administration of the Eastern Caprivi Zipfel also appeared contrary to the South African Government's declared policy that it did not intend to incorporate South West Africa into the Union. That area had been separated from the rest of South West Africa and was being directly administered by South Africa, a procedure that was even less consistent with the Mandate than the general administrative integration to which he had just referred. As the Committee on South West Africa had quite rightly said, the administration of the Eastern Caprivi Zipfel as an integral part of the Union was not conducive to the attainment of the objectives of the Mandates System, since the territorial integrity of the area was thereby prejudiced. It would be interesting to know why such an extraordinary administrative procedure had been adopted. The Eastern Caprivi Zipfel was further away from the Union than any other part of South West Africa, the whole of Bechuanaland lying between it and the Union. The special attention paid to it by the South African Government was rather disturbing, particularly in view of article 4 of the Mandate prohibiting the establishment of military bases or fortifications in the mandated territory. In any case, the unusual process of administration in the Eastern Caprivi Zipfel was apparently an attempt at piecemeal incorporation of the Territory into the Union.

20. His delegation viewed with concern the representation of South West Africa in the Union Parliament by South African nationals of European descent living in the Territory. There seemed no reason why South West Africa should have any representation in the South African Parliament and why the overwhelming majority of its population, who were indigenous persons, should be represented by foreigners in a foreign parliament. Whatever the reason for such an extraordinary procedure in a mandated territory, it clearly could not contribute to the development of the moral and material well-being of the indigenous inhabitants, who were thus denied direct representation in bodies which legislated for them. He had been astonished to read in the Committee's report (A/2913, annex II, para. 31) the statement by the South African Minister of Native Affairs that it was not the South African Government's policy to give the Native inhabitants of South West Africa direct representation in the Union Parliament. That was a categorical statement and a clear indication of that Government's underlying policy in its administration of South West Africa. He agreed with the Committee on South West

⁴ *Ibid.*, 4th Year, p. 604.

⁵ *Ibid.*, 12th Year, p. 2057.

Africa that that state of affairs greatly prejudiced the Territory's development as a separate political entity. He was glad that the Committee on South West Africa thought that the legal aspects of the arrangement required clarification.

21. Within the Territory of South West Africa itself, there was an Assembly composed of eighteen persons, all of whom were South African nationals of European descent. The indigenous inhabitants, in whose interest the Mandate had been created, were not only debarred from standing for election; they were not even entitled to vote. The Executive Committee, too, was exclusively European in composition. There was no evidence whatever that indigenous persons were even being trained for legislative or executive work. Nor was there any information on how soon indigenous representation in all branches of administration and legislation would be possible. Some policy statement by the administering Power was clearly called for.

22. The South African Minister of Native Affairs had been made responsible for matters specially affecting Natives, including taxation, land and housing, in South West Africa, apparently in an attempt to centralize in South Africa itself the so-called Native affairs of South West Africa. While the Committee on South West Africa had not been able to evaluate the significance of that step, it nevertheless regarded it with a certain measure of doubt, which was shared by his delegation, for the arrangement seemed to run directly counter to the special responsibilities for the Territory provided for in article 2 of the Mandate. It was very doubtful whether the responsibility of promoting "to the utmost the material and moral well-being and social progress of the inhabitants of the Territory" could be satisfactorily discharged by centralizing the administration of South West African Native affairs in the South African Ministry of Native Affairs. That would be the surest way of extending to South West Africa the many discriminatory laws applied to Natives in the Union. Under the Mandate, the South African Government might admittedly be entitled to apply its own laws to South West Africa, but such application was subject to the Mandate itself, with which discriminatory laws were inconsistent. The South African Government's decision to transfer the administration of Native affairs to the South African Ministry might have far-reaching significance for the future of the Territory, and the Committee on South West Africa should continue to keep the matter under careful review.

23. There had been very little development of local self-government in the Native areas since the Mandate had been assumed by the South African Government. The tribal areas were administered largely through Native chiefs and the urban areas through elected Native headmen. He had been surprised to note that Europeans still functioned as Native affairs officers. Some of the advisory tribal councils could clearly be entrusted with more responsibility.

24. The South African nationals of European descent in the Territory all lived in what was known as the Police Zone. The majority of the indigenous population lived outside that zone, where there was presumably not much police protection. The segregation of the population, which had obviously been imported from the Union of South Africa, was an objectionable approach inconsistent with the spirit of the Mandate.

From the figures given in the Committee's report he noted that the European population had increased by 10 per cent while the indigenous population had increased by approximately 7 per cent. The relatively faster increase of the European population was a cause for some concern because it was bound to affect land rights and the share in the Territory's resources. Immigration was a subject administered by the South African Government, doubtless in favour of South African nationals. He drew the Committee's attention to that matter and would be grateful for further light on it in the next report. European immigration should be kept constantly under review and its effects on the interests of the expanding Native population assessed.

25. Land was a vital and important issue in the Territory. The facts spoke for themselves. Land set aside for Native occupation had now been vested in the South African Native Trust. Under the new arrangement the South African Minister of Native Affairs acted as trustee for the land and the right to land was transferable to the South African Native Trust. The League Council had decided in 1926 that the Mandatory Power did not possess any right over any part of the territory under mandate other than that resulting from its having been entrusted with the administration of the Territory.⁶ The Committee on South West Africa had taken the view that the Mandate did not confer authority to divest the Territory of any portion of its assets. The transfer of land to the South African Native Trust was another point, whose legality, under the Mandate, should be clarified. The South African Government apparently regarded the Native problem in South West Africa and in the Union of South Africa as one, and the pursuit of a common policy was bound to have highly adverse effects on the future of South West Africa and its inhabitants.

26. The Committee's report showed that by the end of 1952 the land under European occupation had increased to 37.5 million hectares. In other words, almost half the total area of the Territory was now owned by about 12 per cent of the total population, namely, the European community. It went without saying that the outsiders took the best land and, hence, in terms of land value, well over half the land assets of the Territory might well have passed to the foreign settlers. Urgent action was necessary to arrest such developments, which must place the indigenous inhabitants in a precarious situation clearly contrary to the spirit and purposes of the Mandate. The dispossession of indigenous lands by settlers of European descent was a highly disturbing development and paved the way for agrarian disturbances.

27. The Committee on South West Africa had provided a list of discriminatory measures resulting from the application of *apartheid* legislation to such matters as housing, marriage and freedom of movement. He entirely agreed with the Committee that such measures created a social and political situation which was bound to affect adversely the inhabitants of the Territory. They were clearly inconsistent with the Mandate and the Universal Declaration of Human Rights and they should be abolished. He noted with dismay that labour in the Territory was regarded as a commodity. Several examples of the very harsh labour legislation were given in the Committee's report: Eu-

⁶ *Ibid.*, 7th Year (1926), p. 867 and 945.

ropean Native affairs officers, for instance, had the power to try any labourer for negligence to perform his work; a servant was often in an unequal position in relation to his master before a magistrate; the superintendent of a Native Reserve had the power to compel any male person who led an idle existence to take up employment either on public works or with a private person. Such labour laws were clearly incompatible with various international conventions.

28. It was disturbing to find that here were separate school systems for Natives, Coloured persons and Europeans. Of the total expenditure on education 67 per cent was allocated to European schools serving just over one-tenth of the population. The average unit cost of education varied from £32 for a European to 15 shillings for a Native pupil outside the Police Zone. Equally distressing was the fact that the great majority of schools for non-Europeans were primary schools. Vigorous measures were obviously needed if the indigenous inhabitants were to advance in accordance with the spirit and purposes of the Mandate. If the South African Government felt that it was not equipped to meet its obligations in that matter, it should seek the technical assistance offered by the various specialized agencies.

29. The Committee on South West Africa had concluded that the main efforts of the Administration were exercised almost exclusively in favour of the European inhabitants, often at the expense of the Native population. His delegation shared that opinion and found further justification for it in a statement recently reported to have been made by the Prime Minister of South Africa when visiting South West Africa. According to him, the Territory had outgrown its Mandate shoes and now, as an integral part of the Union, it shared the sovereignty of the Union. The Prime Minister had said that the only alternative to closer association of the Territory with the Union was to place the Territory under the administration of the United Nations, and had added that that could have only one result, namely the complete domination of the White minority in the Territory. It was quite clear to the Indian delegation that the South African Government was preoccupied with the fate of the White settler in South West Africa and his future and that its administrative policy was mainly dictated by that fact. Such a policy was contrary to the spirit and purposes of the Mandate and would eventually lead to incorporation of the Territory into the Union. Many of the administrative measures already taken strengthened the association between the two territories.

30. His delegation deeply regretted that the South African Government's policy left it no option but to come to the unhappy but inevitable conclusion that the administration of South West Africa ran counter to the spirit and principles of the Mandate which made the moral and material well-being of the indigenous population a sacred trust.

31. Mr. KHOMAN (Thailand) said that the representative of the Union of South Africa had attempted to prove in his first statement at the 491st meeting of the Fourth Committee that the resolution of the Assembly of the League of Nations of 18 April 1946 had not transferred to the United Nations the supervisory functions exercised by the League in respect of Mandates. He had done so despite the fact that in its advisory opinion of 7 June 1955 (p. 73), the

International Court of Justice had used that resolution together with Articles 10 and 80 of the Charter, as a basis for arriving at exactly the opposite conclusion and had recognized "that the General Assembly was legally qualified to exercise the supervisory functions which had previously been exercised by the Council of the League". The members of the Fourth Committee would have noted that the provisions of the Charter referred to by the Court had been passed over in silence by the South African representative, as though they had no binding effects on his country. The deliberate and determined opposition of the South African Government to the opinion of the highest international judicial authority, rendered in complete unanimity by the world's most eminent jurists, and its imputation that the Court had erred, could not but perturb all those States that were signatories both to the Charter and Statute of the International Court of Justice.

32. The South African representative had also contended that if the 1946 resolution of the Assembly of the League of Nations had had the effect of transferring the supervisory functions of the League to the United Nations, his country would have voted against it and it would not have received the approval of the United Kingdom, which had not yet made up its mind what should be done with the Palestine Mandate. Nevertheless, all the former Mandatory Powers with the sole exception of the Union of South Africa had in fact placed their mandated territories under the Trusteeship System. It was unfortunate that the South African representative had not volunteered any explanation of the divergent courses adopted in regard to those other territories and the Territory of South West Africa.

33. The Union of South Africa persisted in maintaining that, in its view, the Mandate over South West Africa had lapsed, and that the only obligation which it recognized was that which it had voluntarily assumed to administer the Territory in the spirit of the Mandate. Thus, South West Africa had lost its status as a mandated territory but its new status was far from clear, save that the Union of South Africa had pledged itself not to annex or incorporate it. The Fourth Committee would of course welcome that assurance, but in practice the distinction between integration and incorporation was not clearly marked. As could be seen from paragraph 24 of the report of the Committee on South West Africa (A/2913, annex II) the South West Africa Native Affairs Administration Act, 1954, had transferred the powers in respect of matters specially affecting the indigenous inhabitants from the Administrator of the Territory to the Minister of Native Affairs of the Union of South Africa. Lastly, under the South West Africa Affairs Amendment Act, 1949, South West Africa had been represented since 1951 in the Union House of Assembly by six Union nationals of European descent elected exclusively by European voters in the Territory. The South African representative had asserted that the fact that South West Africa was represented in the South African Parliament in no way violated the spirit of the Mandate, and that the United Nations had tacitly approved the arrangement for the representation of South West Africa in the South African Parliament. It was hard to see how such a deduction could be made. If anything was to be deduced from General Assembly resolution 227 (III), it should be the grave preoccupation which the General Assembly must have felt regarding the possible incor-

poration of South West Africa into the Union and its anxiety to place on record the South African Government's assurance to the contrary. Moreover, the General Assembly had not then been informed of the details for the execution of the proposed arrangement, and had it known at the time that suffrage would be limited to voters of European descent and that only South African nationals of European descent would be elected and sent to the Union Parliament as representatives of the Territory, the resolution might well not have been adopted.

34. The South African representative had also drawn the Committee's attention to the fact that the Trust Territories of the Cameroons and Togoland under French administration were represented in the French parliament, while Togoland and the Cameroons under British administration were represented in the parliaments of the Gold Coast and Nigeria respectively. There was, however, one very important difference. The Territories in question were represented by indigenous representatives selected by the indigenous population. Representation was not restricted to people of European descent, as in the case of South West Africa.

35. The South African representative had also asserted that under the terms of article 2 of the Mandate, South Africa had full power of legislation as well as administration and could apply the laws of the Union of South Africa to the Territory, subject to such local modifications as circumstances might require. However, the phrase "power of . . . legislation" from article 2 of the Mandate obviously meant merely that the Union of South Africa was empowered by the Mandate to enact laws for the Territory of South West Africa and to apply them there. If the authors of the Mandate had intended the Territory of South West Africa to be represented in the South African Parliament, they would not have passed over such an important question in silence. It was more than likely that explicit provisions would have been included in the Mandate. In that connexion, members of the Committee would have noted that the South African representative had quoted liberally from the Covenant of the League of Nations and from the Mandate which, on many other occasions, he claimed had lapsed. The fact that that international instrument was used and quoted when it served certain purposes, and conveniently discarded when it became a burden or when there was a question of complying with the obligations it created, would not have escaped the Committee's attention.

36. The South African representative appeared to place the blame for the failure to arrive at any satisfactory solution of the problem of South West Africa on the majority in the General Assembly, implying that it was an irresponsible majority which never took into account South Africa's legitimate requirements. However, the overwhelming majority that had adopted the draft resolution endorsing the Court's second opinion (A/C.4/L.405), with the Union of South Africa in sole opposition, did not consist only of Coloured and ex-colonial delegations, but also of delegations of countries like the United States, Canada and New Zealand with which the Union of South Africa maintained close and cordial relations. The majority was in no way antagonistic to the Union of South Africa; it stood for justice and reason, and it would be a sad day for the United Nations and for the whole world if that majority ceased to exist.

37. He had dealt at length with the contentions of the South African representative because to leave them unanswered might confuse the issues for the outside world. For the delegation of Thailand, indeed for all the members of the Fourth Committee, there could be no doubt that the General Assembly had, to use the words of Judge Lauterpacht, "the competence to fulfil the functions as derived from the international instrument which establishes the international status of the territory in question, namely, the Mandate" (1955 advisory opinion, p. 112). That competence had been indirectly confirmed by the Union of South Africa itself when, at the final session of the League of Nations, in 1946, it had intimated its intention to formulate at the forthcoming session of the United Nations, a case for the incorporation of South Africa within the Union,⁷ which the General Assembly had, incidentally, failed to endorse;⁸ and when, in 1949, the South African Government had sent an official communication to the United Nations providing all relevant particulars of the legislation concerning the representation of South West Africa in the Union Parliament (A/929). If the General Assembly was not competent to exercise any supervision over the Territory of South West Africa, it was hard to see why the South African Government should have sought to obtain United Nations endorsement, first for its incorporation of South West Africa and secondly for the representation of South West Africa in the Union Parliament. Those actions of the South African Government did more than any argument could to confirm the correctness of the United Nations stand and to confute the thesis of the Union of South Africa.

38. The report of the Committee on South West Africa represented the means whereby the General Assembly could exercise the supervisory functions provided for in the Mandate and in the Charter. Once again, in spite of the General Assembly's request, the South African Government had failed to transmit a report of conditions in South West Africa. The Committee on South West Africa had therefore had to prepare its report on the basis of material compiled by the Secretariat, chiefly from official documents published by the South African Government. The South African representative had criticized the report and alleged that it contained errors and inaccuracies. He had not said, however, where those errors and inaccuracies lay, or that the deficiencies could easily have been corrected had his Government sent in its own report or appointed a representative to take part in the work of the Committee on South West Africa.

39. The South African Government had agreed that the Territory of South West Africa would be administered in the spirit of the trust which it had originally accepted. The spirit of that trust was most clearly defined in Article 22 of the Covenant of the League of Nations which stated, *inter alia*, that in mandated territories "there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization". That the Committee on South Africa had regretfully reached the conclusion that the terms of that trust were not being fulfilled was clear from paragraph 198 of its report on conditions in the Territory (A/2913, annex II). The Fourth Committee would be glad if the South African

⁷ *Ibid.*, Special Supplement No. 194, p. 32-33.

⁸ See General Assembly resolution 65 (I).

representative could refute those conclusions with facts and evidence. However, the South African representative's chief objection had been that the Committee on South West Africa was undertaking an impossible task because it was obliged to work so far away from the African scene, and because its members had no first-hand knowledge of the problems of the Territory. It was unlikely that the members of the Committee on South West Africa would ever have an opportunity to gain first-hand knowledge of conditions in the Territory as long as the present attitude of the South African Government persisted.

40. Paragraph 199 of the Committee's report recognized that certain efforts were being made by the South African Government to assess the problems of the Territory. However, it was questionable whether those efforts were in themselves sufficient to improve the conditions resulting from that Government's neglect of the interests and well-being of the indigenous population. Paragraph 97 of the report dealt with the important question of land settlement. Again the Committee's conclusion was that the policy of the South African Government was dictated by the interests of the Europeans and that the present and future interests of the non-European inhabitants were not being sufficiently safeguarded. Paragraphs 158, 162 and 195 of the report gave the Committee's conclusions that in questions of labour and education also, the principles of the sacred trust were being disregarded.

41. He had selected only the most salient points of the report to show the seriousness of the conditions

which prevailed in South West Africa. He had refrained from commenting on the Committee's conclusions or stating his own opinion. His own opinion was that the Territory really needed not so much an appraisal and judgement of the situation as urgent remedies and earnest efforts from the administering Power to relieve as soon as possible at least some of the ills referred to in the report.

42. The Fourth Committee, confronted with the situation in South West Africa and conscious of the functions which the United Nations was called upon to fulfil in its regard, could do no less than endorse the observations of the Committee on South West Africa, draw the attention of the South African Government to its report and observations and, lastly, urge it to give serious consideration to the report with a view to the early implementation of its recommendations. Despite all the evidence to the contrary, the delegation of Thailand still hoped that the Committee's recommendations would be taken into account by the South African Government. Judge Lauterpacht, in his separate opinion attached to the advisory opinion rendered by the International Court of Justice on 7 June 1955, had said (p. 120) that an administering State which consistently set itself above the solemnly and repeatedly expressed judgement of the Organization might find that it had overstepped the imperceptible line between the exercise of the legal right to disregard a recommendation and the abuse of that right, and that it had exposed itself to consequences legitimately following as a legal sanction.

The meeting rose at 12.25 p.m.